EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE (SENTENCING) (LICENCE CONDITIONS) (AMENDMENT) ORDER 2017

2017 No. 985

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 This instrument amends the Criminal Justice (Sentencing) (Licence Conditions) Order 2015 ("the 2015 Order"), which applies to offenders subject to determinate custodial sentences who have been released from custody into the community on licence. The purpose of this instrument is to prescribe an additional broad type of condition that may be included on an offender's licence, where the standard conditions are not sufficient to assist the offender's successful integration into the community, to prevent further re-offending and ensure the protection of the public.

2.2 The instrument also makes two minor technical amendments to the electronic monitoring (EM) licence requirements in the 2015 Order; to remove the requirement to charge an EM daily and allow the charging regime to be set by the supervising officer, and for technical faults to be reported by the offender to someone specified by the supervising officer rather than the supervising officer directly.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The 2015 Order sets out the licence conditions and types of licence conditions to which an offender must or may be subject. In particular, article 7(2) prescribes the kind of additional conditions that may be included in an offender's licence. Further, article 4(2) of the 2015 Order sets out the standard conditions that must be included in an offender's licence where that offender is subject to an electronic monitoring condition under sections 62 and 62A of the Criminal Justice and Court Services Act 2000.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Addition of further licence condition category, namely, "the restriction of specified conduct or specified acts". This kind of condition is required to be wide enough for offender managers (probation officers who supervise offenders in the community) to be able to target the particular issue that may trigger offending in an individual.

7.2 When preparing for the release of a determinate sentenced offender, supervising officers will consider whether to recommend any additional licence condition which falls within the descriptions set out in article 7(2) of the 2015 Order. Additional licence conditions, which are those conditions set out under the 2015 Order in 7(2) are applied only on a case by case basis where the standard conditions are not sufficient to ensure the offender's successful integration into the community, prevent re-offending or to ensure the protection of the public and only where they are necessary and proportionate for these means. In order to be lawful, any licence condition, standard or additional, has to be necessary and proportionate to manage the offender's risk of reoffending and risk of harm. It is open to an offender to challenge the imposition of a licence condition by way of application for judicial review, where the offender considers that the condition is not necessary or proportionate to manage those risks. This amendment to the 2015 Order expands the current types of conditions that can already be applied, for example exclusion zones and curfew conditions.

7.3 This instrument amends the 2015 Order to add a new category of licence condition, concerning "the restriction of specified conduct or specified acts". This condition will be reflected in the Prison Service Framework (formerly Instruction) 'Licence Conditions' and Probation Instruction 'Licence Conditions and Temporary Travel Abroad'. In the initial update to the Instructions/Framework following the publication of this SI, there will be licence conditions introduced to prohibit gambling, drinking alcohol, and visiting certain social media websites. It therefore gives offender managers an additional tool to try to successfully reintegrate a prisoner safely back into the community and prevent further offending. In due course, this additional category of licence condition is likely to be useful in prohibiting other types of activity, which in certain offenders is known to be associated with their offending. Specifically, it is likely to be useful in prohibiting offenders convicted of certain non-contact sexual offences from visiting certain websites.

7.4 In practice, all pre-approved additional conditions are set out in Probation Instructions and Prison Service Instructions (shortly to be replaced by Prison Frameworks). They can be found at: http://www.justice.gov.uk/offenders/probation-instructions and http://www.justice.gov.uk/offenders/psis. In planning for an offender's release, a supervising officer will create a release plan including the consideration of which additional licence conditions are appropriate. These conditions are then submitted to the Governor of the releasing prison, who will review their application on behalf of the Secretary of State. Only once the Governor confirms the conditions, are they legally enforceable. Should the supervising officer require a condition which falls

under the categories but is not included in the Instructions, it will be individually reviewed by the Public Protection Casework Section (PPCS) within HMPPS. Where a change to additional licence conditions is required following release from custody, rather than the Governor agreeing them on behalf of the Secretary of State, this responsibility falls to PPCS for the Community Rehabilitation Companies and is conducted internally by the National Probation Service by Assistant Chief Officers.

7.5 The consumption of alcohol is a known factor in recidivism for some offenders. In 2004, the Prison Reform Trust published a paper which estimated that 63% of male offenders and 39% of female offenders within the England and Wales prison estate admitted to hazardous drinking prior to imprisonment. At the same time, the estimated cost of alcohol-related crime and public disorder was £7.3 billion per year. A condition to require an offender not to consume alcohol would set an expectation for an offender on licence and compliance with that condition would be subject to recall.

7.6 Changes to the electronic monitoring licence condition. This instrument also makes two minor amendments to article 4 of the 2015 Order, which sets out the standard licence conditions that must be included in an offender's licence where the offender is subject to an electronic monitoring condition. The amendments will allow for more flexibility in the management of technology, which at the moment are typically ankle mounted devices or "tags". The first amendment provides that offenders must ensure that the electronic device is sufficiently charged at all times, to the satisfaction of their supervising officer, if required. This amends the current requirement that the device must be charged. The alteration reflects the fact that not all electronic monitoring devices need to be continually charged, and takes into account the difference in battery charging regimes between different types of EM devices. While current GPS devices require frequent charging, older technology such as radio frequency (RF) devices (which only monitor distance from a set location rather than track the movement of offenders, and are therefore used in curfew management) require charging only after a few months. This change is also beneficial, since as battery technology improves, frequency of charging requirements will decrease. This will not change the charging regimes for any offenders immediately, but is intended to prevent a legal requirement on some offenders to unnecessarily charge a RF on a daily basis.

7.7 The 2015 Order currently provides that offenders must report to their supervising officer when a technical fault arises with the EM equipment. The second amendment to article 4 of the 2015 Order permits reporting to any person nominated by the supervising officer. This will allow for flexibility and ensure that the person who is in the best position to respond to any technical issues is able to do so.

Consolidation

7.8 This Order does not consolidate any existing requirements, since it is amending the 2015 Order.

8. Consultation outcome

8.1 There was no consultation undertaken specifically for this instrument. However, consultation with practitioners and trade unions has been conducted in relation to the Probation Instruction and Prison Service Framework which support practitioners supervising offenders on licence and which refers in part to this instrument. The views of those consulted were taken into account in the drafting of these Instructions.

8.2 In summary, all of the responses in relation to the introduction of the additional category of licence conditions was positive, with practitioners expressing an eagerness to have further abilities to manage an offender's alcohol consumption. The feedback received also stated repeatedly that a restriction on accessing specific websites/social media/apps for a wide variety of offender types. Due to the technical aspect of the changes to the electronic monitoring condition, there were no feedback received.

9. Guidance

9.1 A further version of the Prison Service Framework (formerly Instruction) 'Licence Conditions' and Probation Instruction 'Licence Conditions and Temporary Travel Abroad' will be published simultaneously. Practitioners in Her Majesties Prison Service, the National Probation Service and the Community Rehabilitation Companies will be advised of these publications, which can be found at these links: http://www.justice.gov.uk/offenders/probation-instructions and http://www.justice.gov.uk/offenders/psis. Prisoners will be able to access them through their prison library.

9.2 Copies can also be requested from: Brian Chapman, Safer Custody and Public Protection Group, HMPPS, 102 Petty France, London SW1H 2AJ

10. Impact

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

10.2 There is no impact on the public sector.

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

11. Regulating small business

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

12. Monitoring & review

12.1 As the instrument makes only consequential amendments to the 2015 Order no monitoring or review is felt to be necessary.

12.2 The individual licence conditions under the category introduced in this SI are introduced via a Probation Instruction and a Prison Framework. Any future amendments/additions are managed through the same route, which requires consultation with practitioners, legal advisors, relevant policy leads, union representatives and other stakeholders as required. These are published via the standard HMPPS Operational Policy Group process which requires agreement from all senior colleagues in the agency. Where a change is seen to be contentious or wide ranging, there will be further consultation with Ministers, who will consider the need for Parliament to be consulted afresh.

13. Contact

13.1 Brian Chapman at HMPPS Telephone: 020 3334 0454 or email: brian.chapman@noms.gsi.gov.uk can answer any queries regarding the instrument.