EXPLANATORY MEMORANDUM TO

THE COMMUNITY ORDER (REVIEW BY SPECIFIED COURTS) ORDER 2007

2007 No. xxxx

1. 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The above Order is made in exercise of the powers conferred by section 178 of the Criminal Justice Act 2003. It allows Birmingham Magistrates' Court, Bradford Magistrates' Court, City of Salford Magistrates' Court, Enfield Magistrates' Court, Haringey Magistrates' Court, Kingston-upon-Hull Magistrates' Court, Leicester Magistrates' Court, Merthyr Tydfil Magistrates' Court, North Liverpool Community Justice Centre, Nottingham Magistrates' Court, Plymouth Magistrates' Court, South Western Magistrates' Court, Stratford Magistrates' Court, and Teesside Magistrates' Court to provide for the periodic review of community orders that they make or which come before them. It also provides a power to amend the requirements of the order at a review hearing and to alter the review arrangements.

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

3.1 None.

4. Legislative Background

4.1 This is the second use of the power contained in section 178 of the Criminal Justice Act 2003 which was itself brought into force on 7 March 2005. This section allows the Secretary of State, by order, to give criminal courts the power to review community sentences made under the Criminal Justice Act 2003 and to make provisions relating to the frequency and conduct of those reviews and the courts' powers upon review. In particular, orders made under this section may make provision in relation to community orders which correspond to any provisions made in sections 191 and 192 of the Criminal Justice Act 2003 in relation to periodic reviews of suspended sentence orders. The power was first exercised in 2006, by SI 2006 No. 1006, in relation to the Community Justice Centre in Liverpool and the magistrates' court in Salford. The present order now revokes the 2006 order and confers the same powers on the Liverpool and Salford courts. This allows all the courts who have the power to review community orders to be listed in one instrument, for ease of reference.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister of State for the Ministry of Justice, David Hanson, MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Community Order (Review by Specified Courts) Order 2007 are compatible with the Convention rights".

7. Policy Background

7.1 The Criminal Justice Act 2003 introduces new sentencing options for courts. Two of these, community orders and suspended sentence orders, were commenced on 4 April 2005. The Act contains provisions which allow courts making suspended sentence orders to include in those orders a periodic review of the offender's progress towards completing the requirements of the order. It also sets out how those reviews should be conducted and what the court's powers are in relation to the frequency of the reviews and its powers to amend an order on review. These provisions were also commenced on 4 April 2005.

7.2 The 2003 Act also contains an order-making power in section 178 which allows the Secretary of State to make the same or similar reviews available in relation to community orders. This order exercises that power by giving the courts specified in paragraph 2.1 above the power when making a community order or when a community order for which they are responsible comes before them to include a requirement that the order be subject to periodic review. Such reviews will take place at specified intervals and will allow the court to monitor progress of the offender in relation to the requirements of the order. The reviewing court has the power to change the review arrangements and to amend the requirements of the community order subject to specified limitations. In particular, the Order prevents the court from imposing different or more onerous requirements without the consent of the offender and also prevents it from extending the period specified in the community order within which all the requirements of the order must have been complied with. If the community order consists of a drug rehabilitation requirement and another requirement, the drug rehabilitation requirement can only be reviewed in accordance with section 210 of the Criminal Justice Act 2003. But the order allows the courts involved in the pilot to review the other requirement.

7.3 The power in section 178 was first exercised in SI 2006 No. 1006 in relation to the Community Justice Centre in Liverpool and the magistrates' court in Salford. In conferring the power on twelve more courts, it was felt that it would be preferable to have all the courts with the power to review community orders listed in one place. This order accordingly revokes the 2006 order and includes the Liverpool and Salford courts, re-conferring their existing powers of review.

7.4 It was the Government's intention to consider the effectiveness and resource implications resulting from the use of court reviews of suspended sentence orders before deciding whether or not to exercise the powers to allow court reviews of community orders generally. However, the Government considers that the courts named in this Order and the previous one provide an ideal opportunity to test these measures given the close interest in community justice that they take in the sentences that they impose. These pilots will help to inform the decision on whether to allow periodic reviews of community orders more widely.

7.5 The purpose of piloting in Liverpool and Salford was to ensure that the judiciary had the full range of powers needed to give effect to the essential problem solving element of community justice. It was anticipated that this would increase compliance with community orders, reduce reoffending and increase community confidence in community orders. The pilot was also intended to allow evaluation of the outcomes for offenders of reviewing their progress on community orders and the resource impact for the courts and the National Offender Management Service.

7.6 There is qualitative information from the independent evaluations of Liverpool and Salford to suggest that the review process is having a positive impact on offender behaviour, but the quantitative data to support this finding is limited. This is due to the low numbers of offenders who have been subject to review hearings, the short time period in which to assess re-offending and the lack of a control sample against which to compare data.

7.7 Accordingly the Government considers that the power should be extended to the new pilot community justice areas. The new pilot areas were selected on the basis of a targeted analysis of need, balanced by the desirability of ensuring a geographical spread of projects (including Wales).

7.8 The extension of the power to the new community justice initiatives is intended to ensure that they also have the full range of powers to implement the problem-solving element of community justice. It will also provide the Programme with much richer information from which we will be able to draw more robust conclusions about the operation of the section 178 review process, its resource impact and effect on compliance and re-offending rates as well as insight into the operation of the process in different types of community.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The main impact on the public sector is that there will be more court hearings in the pilot areas in relation to community orders to enable review of progress of community orders. However, if these are effective there should be a decline in the number of hearings in relation to breach of community orders. There

will also be an effect on probation service workload as they will need to provide the courts with progress reports, but again this might be expected to be offset to some extent by reduced breach proceedings. There may also be some small costs to the Criminal Defence Service as offenders required to attend review hearings may qualify for legal aid subject to the justice test. However, it is not expected that attendance will be required in many cases.

9. Contact

9.1 Dominic Nwosu at the Ministry of Justice (Tel: 020 7035 8371 or e-mail: dominic.nwosu@justice.gsi.gov.uk) can answer any queries regarding the instrument.