EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE AND COURTS ACT 2015 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Section 93(5) of the Criminal Justice and Courts Act 2015 ("the 2003 Act").

2. Purpose of the instrument

2.1 The Criminal Justice and Courts Act 2015 ("the 2015 Act") introduced the special custodial sentence for offenders of particular concern. When adding sections 236A and 244A to the 2003 Act, the consequential amendment required to section 267 of the 2003 Act was omitted. This Order corrects that omission.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

3.3 The Department has reached this view because the purpose of this instrument is to change the automatic release point for certain offenders sentenced to a standard determinate sentence, which is within the devolved legislative competence of the Scottish Parliament and the Northern Ireland Assembly.

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 set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Secretary of State, Robert Buckland QC MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Criminal Justice and Courts Act 2015 (Consequential Amendments) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2015 Act introduced the sentence for offenders of particular concern, inserting sections 236A and 244A into the 2003 Act. Schedule 1 of the 2015 Act made consequential amendments in respect of the insertions. However, a consequential amendment to section 267 of the 2003 Act, giving the power to alter the proportion of sentence served before release, was not made under Schedule 1 of the 2015 Act, nor on commencement of the provisions.

6.2 Section 267 of the 2003 Act purports to allow for an amendment to the consecutive sentence calculations provisions in section 264 of the 2003 Act. Section 267 currently give the power to amend section 264(6)(a)(ii); however, section 264(6)(a)(ii) has been repealed and replaced by subsection 264(6)(d).[1]

6.3 Section 267 allows for an order to modify the application of sections 264 (consecutive terms) of the 2003 Act, to alter the percentage of the proportion of a prisoner's consecutive sentence that is to be served in custody. This Order makes a consequential amendment to section 267.

7. Policy background

What is being done and why?

7.1 This change is being made to rectify an omission when parts of the 2015 Act were commenced. This will ensure that the release provisions are correct and up to date with all relevant changes to sentencing and release legislation. The omission came to light when the power in section 267 was being used to make the modifications set out in Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2019.

Commencement of the Instrument

7.2 This instrument will come into force on the day after it is made.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 No consultation exercise was conducted.

([1]) Criminal Justice and Courts Act 2015 c. 2 Sch.1(4) para.23(2).

11. Guidance

11.1 Changes to release provisions will affect the way in which sentences are calculated in prison, in order to determine the correct release date. Guidance on how sentences should be calculated is contained in a policy instruction, which will be updated.

12. Impact

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

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen. No direct impact affecting costs to the public sector is expected as this change is a technical amendment.

13. Regulating small business

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

14. Monitoring & review

14.1 The Order does not include a statutory review clause.

15. Contact

15.1 Miranda Wilkinson at the Ministry of Justice Telephone: 07547 968297 or email: miranda.wilkinson1@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Claire Fielder, Deputy Director for Bail, Sentencing and Release Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.