EXPLANATORY MEMORANDUM TO

THE SENTENCING ACT 2020 (PRISON SANCTIONS) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Minister McKinnell, Minister of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Rob Linham, Deputy Director for Prison Safety, Security, Behaviour Management and National Security Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The Prisoner Behaviour Policy Team at the Ministry of Justice can be contacted by email at the following address with any queries regarding the instrument: prisonerbehaviourpolicy1@justice.gov.uk. Alternatively, the department can be contacted by telephone: 0203 334 3555.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Sentencing Act 2020 (Prison Sanctions) Regulations 2026 ('the Regulations') are made using the powers conferred by sections 41B (4) to (9) of the Sentencing Act 2020(**a**).

4.2 The Regulations set out the terms of a 'prison sanctions order', created by section 1 of the Victims and Courts Act 2026 ('the 2026 Act') which inserts new section 41B into the Sentencing Act 2020 ('the 2020 Act'). A prison sanctions order is a new disposal available to Crown Court judges to impose in cases of an offender, aged 18 years old or over, who has breached an attendance order which amounts to the commission of criminal contempt of court. This instrument specifies the prison sanctions, and associated maximum time limits, that will be made available under a prison sanctions order.

4.3 The sanctions specified by this instrument are drawn from the list of 'governor's punishments' under Prison Rule (PR) 55 of the Prison Rules 1999 ('the Prison Rules') and Rule 60 of the Young Offender Institution Rules 2000 ('the YOI Rules'). These are the punishments available for governors within the prisoner discipline procedures (adjudications) policy.

4.4 This instrument also sets out the limited grounds on which a prison governor may override a prison sanctions order where necessary for health, safety, or operational reasons. This instrument has been created under the delegated power in the 2020 Act.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument is England and Wales.

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

5. Policy Context

What is being done and why?

Prison Sanctions Orders

5.1 The 2020 Act provides Crown Court judges with the power to order an offender in custody to attend their sentencing hearing (an attendance order). Further, it allows judges to impose a 'prison sanctions order' should they commit a contempt of court by breaching the attendance order or are so disruptive as to require removal from the hearing. A judge is able to impose a prison sanctions order, instead of, or in addition to, any other power available to the court, such as additional time in custody. This instrument sets out the terms of a prison sanctions order in line with powers under sections 41B(4) to (9) of the 2020 Act.

5.2 These measures have been introduced following the refusal of several adult murderers to attend their sentencing hearings which resulted in the need to clarify the court's powers to order, and deal with, attendance. Such refusal to attend hearings without reasonable excuse can cause victims and their families significant further distress and denies them and the wider public the opportunity to witness the full administration of justice.

5.3 The reason for introducing prison sanctions orders is that many of the offenders who refuse to attend will be facing lengthy sentences, and therefore the existing disposal of an additional custodial term (of up to two years) or a fine is not always considered to be an effective deterrent or punishment. These measures therefore broaden the range of disposals available to judges to provide deterrents and punishments for such offenders.

5.4 The sanctions that are made available to judges via this instrument have been drawn from the list of governor's punishments for adjudications. These can be found in PR 55 and YOI Rule 60. They were limited to those that are available to governors for disciplinary procedures to ensure coherence and operational workability in a prison context. The sanctions selected are also deemed effective as they provide a deterrent and punishment equal to the severity of criminal contempt of court.

5.5 There are four sanctions available to judges. One sanction is forfeiture of privileges. This has for a long time been the most used of all adjudication punishments[1], accounting for 71% of the punishments awarded in 2025 (370,166 of 522,071). It allows certain items or activities (per PR 8) to be taken away for up to the maximums defined in these regulations. This includes for example additional time in the gym or in-cell TV. This sanction reflects both what is viable for the prisons to deliver operationally and what could be considered by a judge to be adequate and

[1] Further data on adjudication punishments since 2010 available at https://www.gov.uk/government/collections/offender-management-statistics-quarterly

commensurate to the commission of criminal contempt of court for breach of an attendance order.

5.6 Cellular confinement is another available sanction. This consists of confining the prisoner to a cell for the majority of the day, but with continued access to legal entitlements and risk assessed elements of the regime such as appropriate bedding, sanitation, correspondence and exercise. This can be imposed for up to 10 days under the YOI Rules and up to 21 days under the Prison Rules.

5.7 This instrument also sets out that an order to impose cellular confinement is subject to a health screen before it can be implemented. This provides a safeguard to ensure that a prisoner is medically suitable, which is generally in regard to a prisoner's mental or physical wellbeing. Cellular confinement is operationally deliverable in nearly all establishments[2] and could be considered by a judge as a commensurate punishment for the commission of criminal contempt of court for breach of an attendance order.

5.8 The two remaining sanctions are the forfeiture or restriction of social visits. Social visits can be forfeited for a period not exceeding 27 days or restricted to once in every period of 28 days for a period not exceeding 84 days. These punishments will not apply to social visits from a child of the offender and any adult appropriately accompanying that child. 'Child of the offender' is defined in the Regulations and is consistent with the definition in PR 55. This exemption has been included to ensure that social visits punishments do not undermine the Government's commitment to support the children of prisoners to maintain family ties (where safe, appropriate and in the child's best interest) and that rehabilitation remains central to this Government's approach. Maintaining contact between children and their parent in custody is an important consideration, particularly given that parent-child relationships can be adversely affected by periods of separation and may be more difficult to rebuild over time.

5.9 The intention is for these sanctions to provide a strong deterrent against offenders refusing to attend their sentencing hearings when subject to an attendance order. Social visits are typically highly valued by prisoners making their restriction a powerful deterrent or punishment for those who breach their attendance order.

5.10 These sanctions engage Article 8 of the European Convention on Human Rights (ECHR) of both the prisoner and their family members. It will be a matter for judges when considering imposing this punishment to ensure that the interference with Article 8 rights is justified as necessary and proportionate.

Governor discretion

5.11 This instrument confers a power on the governor of the prison or YOI in which the person who has received a prison sanctions order is taken, to override a prison sanctions order in certain circumstances. This provides a safeguard where the sanction is proving to be seriously detrimental to the offender or the safe running of the establishment and action needs to be taken swiftly. This discretion is fundamental to ensuring governors can fulfil their legal obligations to maintain operations and the health and safety of staff and prisoners. If a governor overrides a prison sanction, the reasoning will be recorded and there will be a clear and detailed rationale as to why

[2] Some prisons, such as open prisons, will not be able to operationally deliver cellular confinement. However, it is unlikely that this measure would be used on an offender going into an open/category D prison as these measures are to be used as a deterrent for offenders receiving long sentences.

this has taken place. This will reflect the limited grounds on which a governor might use this.

5.12 The Regulations specify the limited grounds on which a governor might use their discretion to delay, pause, prematurely terminate or waive entirely a sanction. These are based on the principles of maintaining health, safety, and operational effectiveness of the establishment, and include in an operational emergency, on compassionate grounds or where there are serious concerns about the effect of the prison sanctions order on the offender's mental or physical health. In the unlikely event that a prison cannot operationally deliver a sanction, the governor will be able to override the sanction, to ensure governors can fulfil their legal obligations to maintain operations and the health and safety of staff and prisoners. This should enable governors to respond to unexpected changes, for example, when it is necessary to respond swiftly to changing circumstances.

What was the previous policy, how is this different?

5.13 Previously, when a court ordered the governor of a prison to produce a prisoner at court, if the prisoner refused to attend court without a good reason, under the prisoner discipline procedures (adjudications) policy, a governor could impose a prison sanction for the disciplinary offence of disobeying a lawful order under PR 51(22). The new power will enable Crown Court judges to directly impose a prison sanctions order and gives a wider range of disposals to them for failure to comply with an attendance order. Legislation was required to make provision for the power to impose prison sanctions.

5.14 Previously, criminal contempt of court for non-attendance at a sentencing hearing could attract a fine and/or an additional custodial term of up to two years to be awarded by a Judge. A prison sanctions order was not available.

5.15 The legislation therefore has the effect of broadening the court's powers to deal with contempt in these circumstances. It also addresses the gap in available deterrents and punishments for offenders, particularly those who are likely to receive a lengthy custodial term and for whom, therefore, additional time in custody may be ineffectual.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2026 Act inserts new section 41B into the 2020 Act. It gives Crown Court judges the power to impose a prison sanctions order to an offender who has committed criminal contempt of court for breach of an attendance order, as defined under new section 41A of the 2020 Act.

6.2 This instrument is made under section 41B which enables the Secretary of State to make regulations to specify the types of sanctions and the associated maximums that can be imposed under such an order and confers a discretion on the prison governor. Prior to this, there was no provision for the courts to impose a prison sanction for an offender's absence or behaviour in court.

6.3 The Regulations specify the sanctions that can be imposed under a prison sanctions order, which are the forfeiture of privileges, cellular confinement, the forfeiture of social visits and the restriction of social visits. Each sanction has varying maximums based on the sanction itself and the Rules (Prison or YOI) under which the prisoner will be governed day-to-day, as described below.

6.4 Regulation 2 sets out which sanctions may be imposed under a prison sanction order and the associated maximums as well as other legislative requirements:

6.4.1 PR 55(1)(b) forfeiture for a period not exceeding 84 days of any of the privileges under rule 8 of the Prison Rules. For an offender aged 18, 19 or 20 who is to be taken to a YOI for detention immediately after the prison sanctions order is made, under rule 6 of the YOI Rules for a period not exceeding 21 days.

6.4.2 PR 55(1)(e) cellular confinement for a period not exceeding 21 days. For an offender aged 18, 19 or 20 who is to be taken to a YOI for detention immediately after the prison sanctions order is made, for a period not exceeding 10 days.

6.4.3 PR 55(1)(j) forfeiture of social visits for a period not exceeding 27 days and PR 55(1)(k) restriction of social visits to once in every period of 28 days for a period not exceeding 84 days.

6.5 Regulation 2(2) explains that before a governor can implement a prison sanction of cellular confinement ordered by a judge, the prisoner must be seen by a medical practitioner or registered nurse for a health screen to confirm the prisoner is medically suitable for cellular confinement.

6.6 As per regulation 2(3)(a), the social visits punishments will not apply to offenders aged 18, 19 and 20 taken to a YOI for detention immediately after the prison sanctions order is made. Regulation 2(3)(b) confirms that the social visits punishments do not apply to visits from a child of the offender and any adult who is appropriately accompanying that child.

6.7 Regulation 2(4) defines a 'child of the offender' as a person under the age of 18 in respect of whom the offender is either the parent or has parental responsibility for the child within the meaning of section 3 of the Children Act 1989. It also defines a 'social visit' as an in-person visit to an offender but does not include visits from a person acting in a professional or official capacity.

6.8 Regulation 3 describes the exceptional circumstances by which a governor of the prison or YOI in which the offender is detained may exercise a power to delay, pause, reduce the length, or waive entirely the sanction. They are:

6.8.1 In an operational emergency;

6.8.2 On compassionate grounds; or

6.8.3 Where there are serious concerns about the effect of the prison sanctions order on the offender's mental or physical health.

Why was this approach taken to change the law?

6.9 It has long been considered appropriate by Parliament that secondary legislation via regulations is the most suitable vehicle for matters relating to the management of prisoners. The flexibility to amend regulations, as opposed to any primary legislation, is key in being able to respond to a volatile and important area of public service delivery to deliver significant and immediate impacts and respond to operational situations.

6.10 In addition, it is important to have the flexibility to be able to amend the legislation quickly if it is found that the balance of sanctions or use of governor discretion is preventing good functioning of prisons.

6.11 For these reasons, the approach to set out the detail of a prison sanctions order in secondary legislation was chosen, including the sanctions available and the specific exceptional circumstances by which a governor can override a prison sanctions order. Providing this detail in secondary legislation means that amendments to the sanctions can be made much more easily, without the need for primary legislation, should they be needed following implementation and monitoring.

6.12 Under the 2020 Act, a prisons sanctions order will be able to be imposed on an offender who is 18 or over at the time at which the contempt is committed. The Regulations make different provision for those who are over 18 but under 21 and to be taken to a YOI. This is because young people have reduced maturity and capacity for rational decision-making. The sanctions available for those under 21 therefore reflect those in the YOI Rules and are less severe than for those aged 21 and governed by the PRs.

7. Consultation

Summary of consultation outcome and methodology

7.1 This instrument has been developed in close collaboration with His Majesty's Prison and Probation Service colleagues. Prison governors and Prison Group Directors (PGDs) were consulted during the policy development, both in relation to the sanctions chosen as well as more broadly the power for Crown Court Judges and governor discretion.

7.2 Prison governors and PGDs engaged sincerely with the punishments and the questions related to current procedure, potential use of the sanctions and operational implementation. Feedback highlighted the importance of ensuring that any sanctions available for non-attendance are sufficiently impactful, particularly where offenders are serving longer custodial sentences. They also provided insight into the interaction between the courts and prisons, as well as the practical operation of court-ordered sanctions within prisons.

7.3 They provided important insight into how the measures would be received and operational realities of delivering the sanctions in prisons. They commented on the interaction between prison and Court, and the reception from prison governors was that they would engage with the sanctions to ensure they were enacted where operationally possible.

7.4 There was significant discussion about the social visits sanction, as participants noted the importance of social visits at the beginning of a custodial sentence and social visits being important to rehabilitation and the impact on families. It was outlined the punishment for Governors was intended to be used in limited circumstances for the most serious cases of misconduct and in line with the Government's commitment to supporting children of prisoners, the new social visits punishments included an exemption for prisoners' children.

7.5 PGDs also highlighted the risk of governor discretion being used frequently to avoid the use of social visits punishments. As outlined in 5.12, there is limited grounds on which a prison governor may override a prison sanctions order where necessary for health, safety, or operational reasons. All of the above feedback also informed consideration of wider safeguards and governor discretion in the operation of the sanction.

7.6 Overall, engagement with governors and PGDs provided valuable operational insight into the delivery of this policy; it helped inform consideration of the sanctions to be

made available, safeguards and the interaction between court orders and prison processes.

8. Applicable Guidance

8.1 Guidance will be provided to courts and to prisons to advise governors and staff of these changes. The Prisoner Discipline Procedures (Adjudications) Policy Framework[3] will be updated to reflect these changes and re-published on gov.uk in February 2027, with guidance shared with courts and prisons in advance of this date.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment has not been prepared for this instrument as a full impact assessment was published in relation to the Victims and Courts Act 2026.

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does not impact small or micro businesses.

9.4 There is no significant impact on the public sector because prisons and courts will continue to follow established procedures and will be provided with updated guidance regarding these changes.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to keep the use and impact of prison sanctions orders and governor discretion to override an order under review.

10.2 For example, Diversity and Inclusion Leads will support the oversight of equalities impacts at a local level, while emerging trends and disparities will be considered through existing governance arrangements. Where evidence of disproportionate impacts is identified, these will be investigated further and appropriate mitigating action considered where necessary.

10.3 Given the anticipated small number of cases, and consistent with the Ministry of Justice's approach to the publication of low volume data, information relating to prison sanctions orders is not currently expected to be published.

10.4 The instrument does not include a statutory review clause because this instrument does not regulate business, and therefore the statutory duty under section 28 of the Small Business, Enterprise, and Employment Act 2015 (to include review provisions or publish a statement that it is not appropriate in the circumstances to do so) does not apply.

[3] https://www.gov.uk/government/publications/prisoner-discipline-procedures-adjudications-policy-framework

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Ministry of Justice relies on the anticipatory exercise of powers in section 13(b) of the Interpretation Act 1978 in relation to section 1 of the Victims and Courts Act 2026 ("the 2026 Act"). Section 1 of the 2026 Act will insert a new section 41B into the Sentencing Act 2020 (in part 3 of the Sentencing Code), which gives the power to make this instrument.

11.2 The Ministry of Justice considers that it is expedient to rely on section 13(b) of the Interpretation Act 1978 in relation to section 1 of the 2026 Act (to the extent set out above) because it considers it desirable for reasons of clarity and certainty that the whole of the new regime comes into force at the same time. The Ministry of Justice intends to commence section 1 of the 2026 Act to coincide with the coming into force of this instrument.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Justice has made the following statement regarding human rights: "In my view the provisions of the Sentencing Act 2020 (Prison Sanctions) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").