EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (GOODS AND SERVICES) (PUBLIC BODIES) (ENGLAND) ORDER 2014

2014 No. 1197

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 The Order enables the National Probation Service and Community Rehabilitation Companies in England to enter into agreements with local authorities to be supplied with legal, occupational health, health and safety, human resources or accounting services, or a combination of those services. These services are of a kind previously provided by some local authorities to some probation trusts; however, as a result of the reforms to the provision of probation services, probation trusts' functions will be transferred to the National Probation Service and Community Rehabilitation Companies. This Order allows for a period of continuity in the provision of these services.

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

3.1 None.

4. Legislative Context

4.1 Section 1(1) of the Local Authorities (Goods and Services) Act 1970 (the 1970 Act) provides that a local authority and any public body within the meaning of section 1 may enter into an agreement for "the provision by the local authority for the public body of any administrative, professional or technical services" (subsection (1)(b)). The local authorities and public bodies covered by section 1 are defined in subsection (4).

4.2 The effect of section 1(5) of the 1970 Act is that the Secretary of State for Communities and Local Government and the Secretary of State for Justice acting jointly may by order provide that any person who appears to them to be exercising a public function is specified as a public body for the purposes of the Act and that any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

4.3 As amended by the Offender Management Act 2007 (Consequential Amendments) Order 2008 (SI 2008 No. 912), the public bodies itemised in section 1(4) include "a probation trust".

4.4 Probation trusts are bodies established under the Offender Management Act 2007. Section 5 of that Act empowers the Secretary of State to establish probation trusts, the purposes which must consist of, or include, the making or performance by the trust of contracts with the Secretary of State in connection with the provision of probation services.

4.5 As these trusts will cease to provide probation services from 1 June 2014, and their functions will be transferred to the new bodies, local authorities will not be legally permitted to continue to provide services to these new organisations under the 1970 Act unless they are listed in the Act as public bodies.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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

7.1 The policy objectives of the 1970 Act are to enable a variety of public bodies, including probation trusts, to obtain goods and services from local authorities.

7.2 As part of a series of reforms known as the *Transforming Rehabilitation* programme, the Government is creating a new structure for the provision of probation services, to replace the existing structure under which these services are provided by probation trusts. Under the new arrangements, higher-risk offenders are to be managed by a new National Probation Service; and medium- and lower-risk offenders by 21 new locally-based Community Rehabilitation Companies. Responsibility for the provision of probation services will transfer to these new bodies on 1 June 2014.

7.3 The Order enables the National Probation Service and the Community Rehabilitation Companies, during a transitional period up to 30 June 2015, to obtain services by virtue of the provisions in the 1970 Act from local authorities in connection with legal, occupational health, health and safety, human resources or accounting services. These are services of a kind that some local authorities have been providing to some probation trusts. Other probation trusts provide themselves with these services from their own resources or obtain them from other providers.

7.4 In longer time, but in any event by 1 July 2015 at the latest, those local authorities wishing to continue to provide these services will be expected to do so in reliance

on their general power of competence, conferred on them by section 1 of the Localism Act 2011 (the 2011 Act). Section 4 of that Act, however, restricts local authorities from exercising these general powers for a commercial purpose, unless they do so through a company. It is unclear how far, in the longer term, the new organisations will wish to continue to purchase these services from local authorities. As it would require time and resources for local authorities to set up new arrangements under the 2011 Act, including the creation of trading companies, it is considered sensible to make provision for a transitional and limited period, during which local authorities may continue to provide services under their existing powers in the 1970 Act. This will give them time to consider with the new organisations, once those organisations begin delivering services on 1 June 2014, whether there is a continuing wish for these services to be provided in the longer term and, if so, to make the necessary arrangements under the 2011 Act.

7.5 These regulations do not extend to Wales and only apply to the provision of services in England. Accordingly the order does not apply to the Wales Community Rehabilitation Company Ltd which will provide probation services in Wales.

7.6 The *Transforming Rehabilitation* reforms are the focus of considerable public interest; however, the change made by the present Order is a purely administrative one, which did not require consultation.

7.7 This change is a minor one, but it is important in the context of the need to facilitate a smooth handover from probation trusts to the National Probation Service and the Community Rehabilitation Companies.

8. Consultation outcome

8.1 Because the changes made by the Order are of a purely technical nature – enabling existing arrangements to continue for a short time under the new probation structure – it was not necessary to undertake a formal consultation exercise. The need for the Order, and its contents, were agreed with the probation trusts and local authorities concerned, and with the National Probation Service and the Community Rehabilitation Companies. During discussions with these organisations, it became apparent that an interim measure was needed to avoid any disruption from 1 June 2014, as there was not enough time or sufficient certainty for local authorities to consider and make the necessary arrangements in reliance on their general power under the 2011 Act.

9. Guidance

9.1 The Ministry of Justice will inform the National Probation Service and the Community Rehabilitation Companies about the continued availability of these services.

10. Impact

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

10.2 As regards the public sector, the Order simply enables local authorities to continue, for a short period, to provide services they are already providing.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As the purpose of the Order is simply to enable bilateral arrangements that currently exist between probation trusts and local authorities to remain in place for a brief transitional period when probation trusts are replaced by the National Probation Service and the Community Rehabilitation Companies, no monitoring is planned, or necessary.

13. Contact

Toby Cottrell at the Ministry of Justice, tel: 0300 047 6291 or e-mail: toby.cottrell@noms.gsi.gov.uk can answer any queries regarding the instrument.