EXPLANATORY MEMORANDUM TO

THE OFFENDER MANAGEMENT ACT 2007 (DISSOLUTION OF PROBATION TRUSTS) ORDER 2014

2014 No. 2704

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 Order provides for the dissolution of 35 Probation Trusts currently in existence across England and Wales. The Order also specifies the necessary accounting duties that must be complied with as a consequence of the dissolution of these trusts.

2.2 This Order is necessary in light of the reforms to the provision of probation services across England and Wales, whereby the delivery of probation services previously provided by these trusts is now being provided by the National Probation Service and Community Rehabilitation Companies.

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

3.1 None.

4. Legislative Context

4.1 Probation trusts are bodies established under section 5(1) of the Offender Management Act 2007 ("the 2007 Act"). Section 5 of the 2007 Act enables the Secretary of State to establish probation trusts, the purposes of 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.

4.2 In total, 37 probation trusts were created in three phases (1 April 2008, 1 April 2009 and 1 April 2010), by the following statutory instruments: The Offender Management Act 2007 (Establishment of Probation Trusts) Order 2008 (S.I. 2008/598), The Offender Management Act 2007 (Establishment of Probation Trusts) Order 2009 (S.I. 2009/504) and The Offender Management Act 2007 (Establishment of Probation Trusts) Order 2010 (S.I. 2010/195). Two of the trusts (Dyfed Powys Probation Trust and South Wales Probation Trust) were dissolved in 2010.

4.3 This Order therefore relates to the 35 probation trusts across England and Wales that are still in existence. Existing contracts with these trusts for the provision of

probation services were terminated on 31 May 2014 and new arrangements were made with the National Probation Service and 21 Community Rehabilitation Companies to provide probation services from 1 June 2014. As the trusts have now completed their required winding up activities they can be dissolved using the power under section 5(1)(c) of the 2007 Act.

4.4 Following their dissolution Trusts will not be able to comply with the financial accounting duties imposed on them by paragraph 13 of Schedule one to the Offender Management Act 2007 or in the case of the Wales Probation Trust by section 13 of the Public Audit (Wales) 2004. Accordingly the Order confers equivalent obligations on the Secretary of State to ensure the accounts are prepared and audited for the period from 1 April 2014 to the date of the Trusts dissolution.

4.5 Article 3 of the Order makes consequential arrangements requiring the Secretary of State to prepare a statement of account for each of the 34 probation trusts in England and send a copy of these statements to the Comptroller and Auditor General, who must examine, certify and report on each statement and send a copy of each report and certified statement to the Secretary of State. The Secretary of State must then lay these before Parliament. The Secretary of State must also make up the final accounts for the Wales Probation Trust and ensure that these are audited by one or more auditors appointed by the Auditor General for Wales.

5. Territorial Extent and Application

5.1 This instrument applies to England & 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

7.1 As part of a series of reforms known as the *Transforming Rehabilitation* programme, the Government has created a new structure for the provision of probation services, to replace the previous structure under which these services were provided by probation trusts. Under the new arrangements, higher-risk offenders are managed by a new National Probation Service; and medium- and lower-risk offenders by 21 new regionally-based Community Rehabilitation Companies.

7.2 Probation trusts ceased to provide probation services on 31 May 2014. The new bodies assumed responsibility for this provision on 1 June 2014. The trusts' boards were discharged on 31 July 2014 with the majority of winding-up activities having been completed: a new interim board was appointed to complete any final

winding-up activities. As probation trusts have no remaining function, they are therefore dissolved by virtue of this Order and as a consequence of their dissolution the obligation to prepare accounts for the period up to dissolution conferred on the Secretary of State.

8. Consultation outcome

8.1 The Government consulted in 2013 on its *Transforming Rehabilitation* proposals and published its response to the comments it received (*Transforming Rehabilitation: A Strategy for Reform*: May 2013). As the purpose of the present Order is simply to dissolve the probation trusts, now that they have no further function, it was not necessary to undertake separate consultation.

9. Guidance

9.1 No guidance is needed as the functions transferred from the probation trusts to the new entities earlier this year. Relevant guidance was published at that time and nothing further is needed.

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 small business.

12. Monitoring & review

12.1 As this Order simply dissolves probation trusts that no longer serve any purpose, no monitoring is planned, or deemed 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.