EXPLANATORY MEMORANDUM TO

THE SENTENCING ACT 2020 (MAGISTRATES' COURT SENTENCING POWERS) (AMENDMENT) REGULATIONS 2024

2024 No. 1067

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.

2. Declaration

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

2.2 John Heavens, Deputy Director for Criminal Justice Strategy & Criminal Court Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kirsty Warne at the Ministry of Justice, kirsty.warne@justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Section 224 of the Sentencing Act 2020 specifies the general limit on a magistrates' court's power to impose imprisonment or detention in a young offender institution in respect of any one offence. Section 224(1A)(b) specifies the applicable limit that may be imposed in respect of a single triable either-way offence. Paragraph 14A of Schedule 23 to that Act gives the Secretary of State powers to alter that applicable limit in specified ways by regulations.

4.2 These Regulations are made under paragraph 14A of Schedule 23 and increase the applicable limit in respect of a single triable either-way offence from 6 months to 12 months.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 All criminal cases begin in a magistrates' court. At the first hearing in the magistrates' court, magistrates will normally determine whether the trial (or sentencing hearing,

where a guilty plea is entered) is suitable to be listed in the magistrates' court, or whether the matter should be sent for trial in, or committed for sentence to, the Crown Court. This process is known as "**allocation**". For the purposes of allocation, there are three different offence categorisations:

(a) Summary-only ("**SO**") offences, which are the least serious criminal offences and carry a maximum penalty of up to 6 months' imprisonment. SO offences can only be tried and sentenced in a magistrates' court (apart from some limited exceptions).

(b) Triable either-way ("**TEW**") offences, of intermediate seriousness, which can be tried and sentenced in either a magistrates' court or the Crown Court.

(c) Indictable-only ("**IO**") offences, which is the most serious category of criminal offence and can only be tried by a jury, convicted and sentenced in the Crown Court.

5.2 The majority of criminal cases are tried and sentenced by magistrates' courts (around 93% in 2023), with the remainder of IO and more serious TEW cases being sent to the Crown Court for a jury trial or to be sentenced.

5.3 If a defendant enters a not guilty plea to a TEW offence at their first appearance, the magistrates must make a decision about allocation by first determining whether the matter is suitable for summary trial in the magistrates' court. The magistrates should conclude that a matter is suitable to be tried summarily unless the sentence that would be imposed would clearly be in excess of the court's sentencing powers, or the case is one of unusual legal, procedural or factual complexity. In cases with no factual or legal complications, the court may retain jurisdiction even where the likely sentence might exceed its powers. Even if they conclude that the case is suitable for summary trial, the defendant may still elect to be tried by a jury in the Crown Court.

5.4 If the defendant pleads guilty to a TEW offence at their first appearance in the magistrates' court, the magistrates should retain jurisdiction and sentence the defendant unless they consider that the appropriate sentence would be in excess of their sentencing powers. In this eventuality, the matter must be committed to the Crown Court for sentence.

5.5 The maximum sentence that a magistrates' court can currently impose in respect of a TEW offence is one of 6 months' imprisonment for a single TEW offence, or a single TEW offence charged together with one or more SO offences, and one of 12 months' imprisonment when sentencing more than one TEW offence.

5.6 The Crown Court outstanding caseload remains one of the biggest challenges facing the Criminal Justice System. The caseload has risen substantially over recent years as a result of the pandemic, the Criminal Bar Association disruptive action and an increase in the number of cases coming before the criminal courts. This has led to a significantly increased Crown Court workload compared to pre-pandemic, which makes reducing the outstanding caseload a greater challenge. A high caseload causes delay in delivering justice in certain cases, which has a range of impacts including on victim experience and attrition.

5.7 On 2 May 2022, magistrates' court sentencing powers ("**MSPs**") were increased from a maximum 6 months to 12 months' imprisonment for a single TEW offence. This measure was intended to improve efficiency in the criminal courts and reduce the outstanding caseload by:

(a) retaining more cases in the magistrates' courts and hearing them more quickly;

(b) freeing up capacity in the Crown Court for other cases to be heard.

5.8 Whilst increasing MSPs did help reduce pressure on the Crown Court (as per MoJ's policy aim), it also had an immediate, inflationary impact on the prison population. Therefore, on 30 March 2023, MSPs were decreased from a maximum 12 months to 6 months' imprisonment for a single TEW offence as part of efforts to address increasing pressures on prison capacity.

5.9 When MSPs were decreased, a review of the policy was carried out, which included both reviewing the impact of increased MSPs between May 2022 and March 2023 and modelling of the potential impact on prison places and outstanding Crown Court caseload if increased MSPs were reinstated. The review confirmed, as above, that whilst increasing MSPs helps reduce pressure on the Crown Court, it does have a short-term inflationary impact on the prison population.

5.10 However, the recent implementation of SDS40 (the change in the automatic release point from prison for offenders serving Standard Determinate Sentences from 50% to 40%) provides a small window to realise the benefits to the Crown Court outstanding caseload afforded by increasing MSPs, as there is now sufficient capacity to absorb the measure's short-term inflationary pressure on prison places.

5.11 Increasing MSPs will also result in a reduction in the remand population. Cases are tried and sentenced quicker in the magistrates' courts and therefore prisoners move from the remand population to the sentenced population at a faster rate, enabling HMPPS to better manage space across the prison estate.

5.12 These Regulations therefore increase MSPs from a maximum 6 months to 12 months' imprisonment for a single TEW offence. The Regulations will come into force on Monday 18 November 2024 and will apply to cases convicted on or after this date.

5.9 Changes to MSPs do not increase the maximum sentence for specific offences; they only expand the courts which can hand down sentences of more than 6 months and up to 12-month sentences. It will mean that, where the defendant pleads guilty on the first occasion when charged with a single TEW either way offence, or a TEW offence together with one or more SO offences, the magistrates' court will be able to impose a sentence of up to 12 months' custody and will not commit the defendant to the Crown Court for sentence where the anticipated sentence is more than 6 months' custody but not more than 12 months' custody. This change may also mean that the magistrates conclude that they should retain jurisdiction for trials with a higher anticipated sentence than before. The policy intention is to ensure that a greater number of cases will remain in the magistrates' court rather than being sent to the Crown Court. The intended consequence of this is that cases which remain in the magistrates' court will move through the courts system more quickly, since magistrates' courts dispose of cases faster than the Crown Court, thereby increasing efficiency.

6. Legislative and Legal Context

How has the law changed?

6.1 The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500) came into force on 2 May 2022. They commenced section 282 of the Criminal Justice Act 2003 which increased the maximum term that a magistrates' court may impose for a single TEW offence from 6 months to 12 months' imprisonment by amending section 32 of the Magistrates' Courts Act 1980 to this effect.

6.2 Section 224 of the Sentencing Act 2020 specifies the general limit on a magistrates' court's power to impose imprisonment, or detention in a young offender institution, in respect of any one offence.

6.3 On 14 July 2022, various amendments were made by section 13(1) of the Judicial Review and Courts Act 2022 ("JRCA"): section 13(1) amended section 224 of the Sentencing Act 2020 to establish separate general limits on the sentencing powers of the magistrates' court for SO and TEW offences. Section 13(2) amended Schedule 23 to the Sentencing Act 2020 by inserting paragraph 14A, which provides a varying power to amend the general limit for a single TEW offence in section 224(1A)(b) of the Sentencing Act 2020. Paragraph 14A allows for the limit for custodial sentences for a TEW offence to be varied from being either a maximum length of 6 months or 12 months. Section 13(3) amended Schedule 1 to the Interpretation Act 1978 by inserting a definition of the term "general limit in a magistrates' court" as being the limit currently specified in section 224(1) of the Sentencing Act 2020. Finally, section 13(4) amended section 32(1) of the Magistrates' Courts Act 1980 to replace the then recently made amendment by section 282 of the Criminal Justice Act 2003 with "the general limit in a magistrates' court" as the maximum term for a single TEW offence.

6.4 On 30 March 2023, MSPs were reduced from 12 months to 6 months' imprisonment or detention in a young offender institution for a single TEW offence using the varying power in paragraph 14A(1) of Schedule 23 to the Sentencing Act 2020.

6.5 Using the varying power in paragraph 14A(1) of Schedule 23 to the Sentencing Act 2020, these Regulations will amend section 224(1A)(b) of the Sentencing Act 2020 to increase the general limit in a magistrates' court from 6 months' to 12 months' imprisonment or detention in a young offender institution for a single TEW offence.

6.6 This increase in sentencing powers will apply to all magistrates' courts in England and Wales from 18 November 2024, the day these Regulations come into force.

Why was this approach taken to change the law?

6.7 The JRCA introduced a power that allows MSPs to be varied from a maximum length of 6 months or 12 months via a Statutory Instrument laid under the negative procedure in order to have flexibility to respond to changing circumstances and manage any unsustainable impacts on the criminal justice system. This is the most appropriate way to increase MSPs from 6 months to 12 months' maximum imprisonment for a single TEW offence.

7. Consultation

Summary of consultation outcome and methodology

7.1 No public consultation has been carried out in relation to these Regulations, but the MoJ has collaborated closely with agencies and partners in the Criminal Justice System on the measure, for example HM Courts and Tribunals Service ("**HMCTS**"), Judicial Office, the Legal Aid Agency, HMPPS and the Crown Prosecution Service ("**CPS**"). Stakeholders were supportive and have been working closely with MoJ officials to ensure smooth implementation of the measure.

7.2 These Regulations implement the policy approved by Parliament by providing the necessary flexibility to reduce or increase MSPs to mitigate any unsustainable pressures on the criminal justice system.

8. Applicable Guidance

8.1 While no formal guidance has been produced by the Ministry of Justice, information about the increase in MSPs will be made available to the judiciary, magistracy, CPS and HMCTS operational staff ahead of changes coming into force. The Sentencing Council will also be notified so that their guidance can be updated.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

9.2 The Impact Assessment found that, in a steady state, 21% of cases committed to the Crown Court for sentencing will be retained in the magistrates' courts, which is equivalent to c.1,800 Crown Court sitting days per year. This is estimated to lead to a Crown Court outstanding caseload that, 18 months after implementation, is up to 2,200 lower than projected.

9.3 The Impact Assessment also found that increasing MSPs will increase the total adult male prison population. The impact is expected to peak 4 months after implementation with a population increase of 400 but this is expected to stabilise 18 months after implementation with a population increase below 100. However, this is exceptionally difficult to model and predict, given the levels of uncertainty around the amount of crime that will be committed, as well as judicial behaviour. As such, the measure will be kept under careful review.

Impact on businesses, charities and voluntary bodies

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

9.5 The legislation does not impact small or micro businesses.

9.6 The impact on the public sector is Option 1 in the Impact Assessment published alongside the Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2024 on www.legislation.gov.uk.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that these Regulations will be monitored and reviewed as part of on-going criminal justice system operational agency meetings and functions.

10.2 The Regulations does not include a statutory review clause as it does not seek to regulate any qualifying activity, within the meaning of sections 28 and 29 of the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State for Justice, Heidi Alexander MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2024 are compatible with the European Convention on Human 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").