EXPLANATORY MEMORANDUM TO

THE SENTENCING ACT 2020 (SPECIAL PROCEDURES FOR COMMUNITY AND SUSPENDED SENTENCE ORDERS) (AMENDMENT) REGULATIONS 2024

2024 No. 1220

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 Lord Timpson, Minister for Prisons, Probation and Reducing Reoffending at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Stephen O'Connor, Deputy Director for Probation Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Harriet Braithwaite at the Ministry of Justice. Email: harriet.braithwaite@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 The Sentencing Act 2020 (Special Procedures for Community and Suspended Sentence Orders) (Amendment) Regulations 2024 will amend the Sentencing Act 2020 (Special Procedures for Community and Suspended Sentence Orders) Regulations 2023 ("the 2023 Regulations") to provide that specified cases will qualify for special procedures if the community or suspended sentence order is made within a period of 30 months, instead of 18 months, beginning with 26 June 2023, which was the day the 2023 Regulations came into force.

4.2 The 2023 Regulations made provision for piloting special procedures for certain community and suspended sentence orders. These special procedures are known as a "problem-solving approach" and the initiative as "Intensive Supervision Courts" (ISCs) (see Section 5 for further information).

4.3 In effect, this will extend the time period in which the special procedures can be applied for a further twelve months, and the ability to apply these procedures will therefore be available until and including 25 December 2025 for Liverpool Crown Court, Teesside Crown Court and Birmingham Magistrates' Court as ISC pilot locations.

Where does the legislation extend to, and apply?

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

4.5 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 The Ministry of Justice launched the ISCs pilot on 26 June 2023, diverting offenders with complex needs away from short custodial sentences and into enhanced community-based sentences managed between probation and the courts.

5.2 The model tests a "problem-solving" approach, by targeting the complex needs of offenders to address the root cause of their offending, based on international evidence which has shown that this can be effective to reduce reoffending rates. We are piloting ISCs to ensure that we can robustly evaluate their effectiveness.

5.3 Amendments to the Sentencing Act 2020, introduced by the Police, Crime, Sentencing and Courts Act 2022, enabled courts selected as an ISC pilot site to trial certain special procedures as problem-solving measures. The courts specified in the 2023 Regulations are able to impose suspended sentence orders or community orders with special procedures which give courts the power to require regular reviews of the orders, judicial power to initiate breach proceedings, and the ability to commit to custody for up to 28 days on no more than three occasions during the order.

5.4 The 2023 Regulations launched two substance misuse ISCs at Liverpool Crown Court and Teesside Crown Court and one female offender ISC at Birmingham Magistrates' Court. These Regulations extend the operation of these ISCs for a further twelve months.

5.5 A further substance misuse ISC was established at Bristol Crown Court, after The Sentencing Act 2020 (Special Procedures for Community and Suspended Sentence Orders) Regulations 2024 came into force on 14 June 2024. The current Regulations do not apply to the Bristol Crown Court ISC, and so under current legislation, this pilot will run for a total of 18 months until and including 13 December 2025.

5.6 Extending the period by which specified courts can make use of special procedures will enable more offenders to be dealt with under the pilot scheme, thus increasing robustness of the impact evaluation which seeks to determine whether there is a case for viable community alternatives to short custodial sentences during a period of prolonged capacity pressures across the estate.

5.7 An externally commissioned interim process evaluation report is due to be published in late 2024. This report focuses on early implementation of ISCs and suggests the pilot is delivering against its objectives, but it will also expand upon challenges to date, such as lengthy implementation and mobilisation periods. Extending the pilot period will allow time to work through these lessons learned, make adaptations where necessary and build evidence ahead of the final process evaluation report, scheduled for publication in summer 2025.

5.8 The current evaluation strategy covers the existing four identified sites, and whilst these Regulations will delay current timescales for some evaluation products (impact and economic evaluation reports), they should make a more robust assessment of impact more feasible. A larger cohort, if of a suitable size, will allow analysts to use a quasi-experimental design comparing the outcomes of those going through an ISC with a matched control group of similar individuals not going through an ISC, to estimate the impact of ISCs on outcomes.

5.9 During the Justice and Home Affairs Committee debate of 26 July 2024, effective community orders which focus on rehabilitation as well as punishment were described as an essential tool in managing the prison population, and the need to evidence the potential of approaches such as ISCs was highlighted within the debate.

What was the previous policy, how is this different?

5.10 The ISC pilot seeks to divert offenders with complex needs away from short custodial sentences (currently up to two years in the Crown Court pilot sites and, from 18 November 2024, up to twelve months in the magistrates' court pilot site for a single either-way offence) into enhanced community-based sentences, targeting the root cause of offending behaviour by addressing underlying needs.

5.11 The ISC model uses a multi-agency approach, providing wraparound interventions. Unlike 'business as usual', the sentences are overseen by a single judge with regular review hearings attached to every order. Judges also have the power to initiate breach proceedings, a process which is usually the sole responsibility of the probation service, and there is the option to order the offender to be committed to prison for up to 28 days as an immediate short custodial breach sanction that can be used up to a maximum of three times throughout the order.

5.12 There is also an expansion of drug testing beyond Drug Rehabilitation Requirements (DRRs) to incorporate offenders who do not reach the threshold for a DRR but whose drug misuse drives their offending behaviour.

5.13 These Regulations do not alter the powers which can be used within an ISC. They seek to extend the period in which the aforementioned components of a problem-solving approach can be trialled and evaluated.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2023 Regulations, as enacted, provide that orders qualifying for special procedures must be made within a period of 18 months beginning with 26 June 2023, which is the date that the 2023 Regulations came into force for the pilot sites at Liverpool Crown Court, Teesside Crown Court and Birmingham Magistrates' Court. This satisfied the requirement in section 395A(4) of the Sentencing Act 2020, which states that where regulations specify a description of community or suspended order for the first time, a time limit of 18 months must be imposed.

6.2 These Regulations amend the 2023 Regulations to provide that orders may be made within a period of 30 months (rather than 18 months) beginning with 26 June 2023. As a result of this amendment, therefore, relevant offenders can continue to be sentenced to an order qualifying for special procedures up to, and including, 25 December 2025. Offenders sentenced to an order qualifying for special procedures within this period will continue to be managed through the ISC for the course of their full order, even if this is beyond the end of the 30-month sentencing power period.

Why was this approach taken to change the law?

6.3 These Regulations amend the 2023 Regulations by extending the period within which orders qualifying for special procedures may be made, which is considered the clearest and simplest means of extending the pilot. Practitioners, already familiar with the 2023 Regulations, will be able to continue to refer to them, as amended, and not have to refer to an additional set of regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 No public consultation has been carried out in relation to these Regulations. There is no requirement to consult in relation to determining the length of the pilot period. Operational details of how the pilots will operate are not matters which lend themselves to public consultation.

7.2 Consultation with stakeholders involved in the ISC pilot was undertaken both at an operational and strategic level. The Ministry of Justice supported this by providing forecast impact on agencies involved in delivery of ISC orders, and invited feedback through the regional governance channels, requiring a joint decision from each strategic oversight board from respective ISC regions. All areas indicated support for extension of the sentencing powers pilot period. This was then presented to the National ISC Project Board for sign-off, which is attended by national leads for agencies which are involved in ISC delivery.

8. Applicable Guidance

8.1 Operational guidance has been developed with stakeholders in each pilot site and is reviewed regularly.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for these Regulations because an Impact Assessment was prepared for the Police, Crime, Sentencing and Courts Act 2022, which remains accurate. This Impact Assessment, 'IA: Sentencing, Release, Probation and Youth Justice Measures' is available on the gov.uk website here: https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-overarching-documents under the Impact Assessment: 'sentencing, release, probation and youth justice measures' as measure K throughout. Overall, the aim of the pilot evaluation is to estimate the impact of ISCs on outcomes such as: reoffending, short custodial sentencing, and offender health and wellbeing. Value for money, including wider societal costs and benefits, will also be evaluated. This is not expected to be available until spring 2028 at the earliest.

Impact on businesses, charities and voluntary bodies

9.2 This measure is not a regulatory provision and out of scope of the Better Regulation Framework. There are no, or no significant, impact on business, charities or voluntary bodies. The Ministry of Justice and operational partners remain in regular communication and strong governance around the pilot ensures that any unforeseen significant impact can be addressed and escalated through the necessary channels.

9.3 These Regulations do not impact small or micro businesses.

9.4 The impact on the public sector is on the Ministry of Justice and its agencies. The Ministry of Justice has provided dedicated funding to support pilot activity, which funds ISC Probation Practitioners within each ISC region, and a HMCTS-based Court Coordinator role. Wider costs associated with ISCs are dependent on extension of existing local commissioning arrangements, to ensure the department does not 'double fund' investment in interventions, including Commissioned Rehabilitative Services and Community Sentence Treatment Requirements. The Ministry of Justice will also

incur costs for monitoring and evaluation and staffing for the project management of the initiative.

9.5 The ISC pilot is funded from within the HMPPS Drug Strategy Budget, which is currently in place until March 2025. These Regulations allow orders qualifying for special procedures to continue to be passed until and including 25 December 2025. Funding for beyond March 2025 will be subject to departmental allocations decisions for the 2025-26 financial year, that are not yet confirmed. These Regulations allow orders qualifying for special procedures to continue to be passed until and including 25 December 2025, and so in the event of a change in funding position for the 2025-26 Financial Year, further regulations could be made to bring the pilot to a close sooner. Any longer-term decisions relating to ISCs, including the option to scale the pilot to further locations, will remain subject to future ministerial decision.

9.6 The pilot removes some cases from 'business as usual' probation caseloads, and extension is expected to lead to a further reduction in the use of short custodial sentences, although these projected savings are not able to be reliably forecasted. It also anticipates to reduce reoffending and improve health and wellbeing outcomes by providing improved access to rehabilitative services, thereby mitigating some long-term pressures on the probation service.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 These Regulations enable the ISC approach measures introduced by the PCSC Act 2022 to be piloted for an additional period of twelve months, making the overall pilot length 30 months in total. Should there be a need to extend the pilot again, further secondary legislation will be required.

10.2 The monitoring and evaluation programme consists of collecting monitoring data to record the numbers going through the ISC and other management information; an externally commissioned process evaluation which will provide analysis of how the ISC pilots have been implemented to inform future changes.

10.3 To measure the impact of ISCs and the value for money that they offer, an impact and economic evaluation will be completed at the end of the pilot. This will be focused on measuring the impact of the ISCs on reoffending outcomes and health and wellbeing outcomes. This final report will be published around two years after the conclusion of the pilot to allow time for reoffending data to be collected. This extension will allow for a broader evidence base, and will allow more scope for a quasi-experimental design to compare outcomes of those sentenced under the ISC with a matched control group.

10.4 The evaluation provides continuous learning for the Ministry of Justice, which can be used to inform future policy decisions on rehabilitative alternatives to custody.

10.5 These Regulations do not include a statutory review clause.

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 As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 These Regulations are 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").