EXPLANATORY MEMORANDUM TO

THE SENTENCING ACT 2020 (SPECIAL PROCEDURES FOR COMMUNITY AND SUSPENDED SENTENCE ORDERS) REGULATIONS 2023

2023 No. 559

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. Purpose of the instrument

2.1 The Sentencing Act 2020 (Special Procedures for Community and Suspended Sentence Orders) Regulations 2023 make provision for piloting special procedures for certain community and suspended sentence orders by stipulating the launch date, pilot locations, eligibility criteria for pilot participants and offences to which the Orders may relate. These special procedures are known as a "problem-solving approach" and the initiative as "Intensive Supervision Courts" (ISCs).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 153 of, and Schedule 14 to, the Police, Crime, Sentencing and Courts (PCSC) Act 2022 introduced amendments to the Sentencing Act 2020 to make provision for special procedures to be used for certain Community Orders and Suspected Suspended Sentence Orders. These special procedures include measures enabling periodic review of such Orders, together with powers of the Court to order up to 28 days in custody where an Order has been breached. Section 395A of the Sentencing Act 2020 explains that Orders qualifying for special procedures must be those of a description specified in Regulations made by the Secretary of State. These Regulations are made under the powers in section 395A of the Sentencing Act 2020 and set out the conditions that must be met for Orders to qualify for special procedures. Since this is the first use of the powers, the Regulations provide that

Orders must be made within a period of 18 months starting with the date that the Regulations come into force.

7. Policy background

What is being done and why?

7.1 In 2016 a Working Group was established by the then Lord Chancellor, the Rt Hon Michael Gove MP, and the then Lord Chief Justice, which concluded that new ISC approaches should be tested in England and Wales. It was recommended that core components of the ISC pilots would include regular reviews of progress by a single judge, graduated incentives and sanctions and judicial power to initiate breach proceedings.

7.2 The Government committed in the Sentencing White Paper 2020 to pilot a problem-solving approach in up to five courts in England and Wales. It introduced new legislative changes to the Sentencing Act 2020 through the Police, Crime, Sentencing and Courts Act 2022 which followed the 2016 Working Group recommendations and made provision for special procedures to apply to certain Community Orders and Suspended Sentence Orders and for there to be a trial period for such procedures.

7.3 In order to trial the measures within the Act, secondary legislation is required to designate pilot sites. In July 2022 three sites were selected with the approval of the Senior Presiding Judge and the Secretary of State. Substance Misuse ISC pilots will be established at Teesside Crown Court and Liverpool Crown Court and the Women's ISC will be piloted in Birmingham Magistrates' Court.

7.4 ISCs enable judges and magistrates to work closely alongside a multi-disciplinary team ranging from probation and health professionals to police. Historically elements of a problem-solving approach have been trialled separately across England and Wales, for instance, Family Drug and Alcohol Courts, Greater Manchester Women's approach and the Liverpool Justice Community Centre.

7.5 The first intended area of focus for Teesside Crown Court and Liverpool Crown Court is substance misuse which has been the traditional focus of problem-solving courts and is the area providing most of the international evidence base. The second area of focus for the Birmingham Magistrates' Court is female offenders given the recognition that crimes committed by female offenders are often attributed to many complex and criminogenic needs.

7.6 The ISC pilots form a key part of the Government's 10-year Drug Strategy commitment to 'Deliver a world-class treatment and recovery system' through improving the criminal justice system's response and, the Female Offender Strategy Delivery Plan by piloting a women's ISC explore how women receiving short custodial sentences can be managed successfully in the community.

Explanations

7.7 The legislative framework requires that Orders eligible for special procedures are those of a description specified in regulations made by the Secretary of State.

7.8 This instrument therefore sets out the conditions that must be met in order for Orders to qualify for special measures. Since this is the first use of the power in section 395A of the Sentencing Act 2020, the Orders must be made within the period of 18 months starting with the date on which the Regulations come into force. The Regulations

specify the selected pilot sites: Birmingham Magistrates' Court, the Crown Court sitting at Liverpool and the Crown Court sitting at Teesside Combined Court Centre.

7.9 The instrument defines ISC pilot participant exclusions and inclusions. Participants must be aged 18 or over at the time of conviction and not, at the time of their conviction, be subject to notification requirements under the Sexual Offences Act 2003. At Birmingham Magistrates' Court the ISC pilot is limited to female persons.

7.10 The instrument introduces offence exclusions to be applied across all three pilot sites, as follows; any firearms offences, the use of a knife or offensive weapon in commission of any offence and sexual offences. However, where an offender is convicted of possession of a knife or offensive weapon and it is their first-time possession offence they may be included in the pilot so long as they do not have a conviction for a previous firearm or knife or weapon offence.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Ministry of Justice has no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 No public consultation has been carried out in relation to these Regulations. Consultation has taken place between the MoJ, HMCTS, HMPPS, the Senior Presiding Judge, the Chief Magistrates Office, Ministers and stakeholders within the three pilot sites. The sites were approved by the Senior Presiding Judge, Chief Magistrate and the then Deputy Prime Minister and were announced in July 2022.

11. Guidance

11.1 Operational guidance to support the implementation of the pilots within the three pilot sites is being produced in conjunction with local colleagues in respective pilot site areas.

12. Impact

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

12.2 The impact on the public sector covers several sectors. For HMCTS and the Legal Aid Agency, the ISC approach is likely to lead to an increase in costs. For MoJ, piloting ISC as a monitoring and evaluation cost. For HMPPS, the establishment of ISCs is expected to lead to a reduction in the use of custody, although these savings are currently unquantifiable. For the judiciary, ISCs aim to have an impact on confidence in the sentencing programme. For offenders, ISC are anticipated to reduce reoffending, and improve health and wellbeing outcomes by providing improved access to rehabilitative services.

12.3 An Impact Assessment has not been prepared for this instrument because an Impact Assessment was prepared for the Police, Crime, Sentencing and Courts Act 2022. This impact assessment, 'IA: Sentencing, Release, Probation and Youth Justice Measures' is available on the legislation.gov.uk website. The existing Impact Assessment remains accurate. By providing for piloting ISC approaches in three sites,

this legislation is expected to: improve judicial confidence in the sentencing system, increase offender compliance, reduce reoffending and reduce the use of custody.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This legislation enables the ISC approach measures introduced by the PCSC Act 2022 to be piloted for a period of 18 months beginning on the date stipulated in the Statutory Instrument. The approach to monitoring this legislation is an internal monitoring framework combined with an externally commissioned process evaluation and analysis of the ISC pilots in order to inform future changes. Such changes could be an extension to the initial pilot periods as well as rolling out to other pilot sites and cohorts of offenders.

14.2 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 period. This will be focused on measuring the impact of the ISC 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.

15. Contact

15.1 Richard Hutchinson at the Ministry of Justice email: Richard.Hutchinson@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Steve O'Connor, Deputy Director for Probation Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Damian Hinds MP, Minister of State at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.