EXPLANATORY MEMORANDUM TO

THE SENTENCING COUNCIL FOR ENGLAND AND WALES (SUPPLEMENTARY PROVISIONS) ORDER 2010

2010 No. 600

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 purpose of this Order is to define the terms of office, resignation and re-appointment of members of the Sentencing Council for England and Wales, and to provide for the removal of members by the Lord Chancellor on grounds of incapacity or misbehaviour, with, in the case of judicial members, the agreement of the Lord Chief Justice.

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

3.1. The Order will come into effect on 15 March, 12 days after being laid. The appointments of members of the Sentencing Council must now be made in the week commencing 15 March 2010. We have therefore had to abridge the normal 21 days to ensure that the order is in effect when the appointments are made. The Ministry regrets the abbreviation of the 21 day period. The prospective members of the Council are being notified as part of the process of appointments that these supplementary provisions apply to their terms of office.

4. Legislative Context

4.1. This Order is made under the provisions of Schedule 15 to the Coroners and Justice Act 2009 which received the Royal Assent on 12 November 2009. Section 118(2) introduces Schedule 15. That provision and Schedule 15 paragraphs 1 to 4, 6 and 9 and, for the purposes of making appointments, paragraphs 5, 7 and 10, were commenced on 1 February 2010 by The Coroners and Justice Act 2009 (Commencement No. 3 and Transitional Provision) Order 2010 (S.I. 2010 No. 145 (C. 18)).

4.2. Paragraph 7 of Schedule 15 provides that the Lord Chancellor may by order make provision as to the terms of office, resignation and re-appointment of members; and to enable the Lord Chancellor to remove a member on the grounds of incapacity or misbehaviour, with in the case of a judicial member the agreement of the Lord Chief Justice.

4.3. Paragraph 7(2) provides that the Lord Chancellor must consult the Lord Chief Justice if the order makes provisions as to the terms of office, resignation and re-appointment of members, and that any provision in the order as to the removal of judicial members may not be made without the agreement of the Lord Chief Justice.

5. Territorial Extent and Application

5.1. This instrument applies to England and 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. The provisions of the Coroners and Justice Act 2009 which will establish the Sentencing Council for England and Wales are yet to be fully commenced. The process of selecting and appointing members is under way. It is necessary that the provisions as to the terms of office, resignation and re-appointment, are in place before the first appointments are made.

7.2. In the event that the vice-president of the Court of Appeal Criminal Division or the Director of Public Prosecutions are appointed as members of the Council, their terms of office will last for as long as they hold those positions. The terms of office of all other members provide that they will not be eligible to serve for more than 10 years in total, and their initial term of office will not exceed 3 years. The provisions as to the term of appointment and re-appointment of the other members, judicial and non-judicial, are in line with Cabinet Office guidance on public appointments which indicates that for a lower tier body, which the Sentencing Council for England and Wales is, a person can serve any number of terms but should not serve on the same body for more than 10 years. The provision for varying periods of re-appointment will help to provide continuity by ensuring that all or many of the members do not leave the Council simultaneously.

8. Consultation Outcome

8.1. The Lord Chief Justice has been consulted as required and has agreed the inclusion in the Order of the provision relating to the removal of judicial members. No wider consultation was necessary or appropriate.

9. Guidance

9.1. As mentioned above at paragraph 3.1 all prospective Members of the Council are being notified as part of the process of offering appointments that these supplementary provisions form part of the terms and conditions of their appointments.

10. Impact

10.1. This Order has no impact on business, charities or voluntary bodies.

10.2. The impact on the public sector is unchanged.

10.3. An Impact Assessment has not been prepared for this instrument.

11. Regulating Small Business

11.1. This instrument does not apply to small business.

12. Monitoring & Review

12.1. The provisions of this Order will be amended if and when necessary in consultation with the Lord Chief Justice.

13. Contact

13.1. Chris Marsh at the Ministry of Justice Tel: 020 3334 5035 or email: chris.marsh@justice.gov.uk can answer any queries regarding the instrument.