# EXPLANATORY MEMORANDUM TO

# THE UNPAID WORK REQUIREMENTS (PRESCRIBED PERSONS FOR CONSULTATION) REGULATIONS 2023

## 2023 No. 430

## 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 purpose of this instrument is to prescribe the persons that providers of probation services are required to consult about delivery of unpaid work each year under the duty in section 10A of the Offender Management Act 2007.

## 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 territorial extent and application of this instrument 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 The Sentencing Act 2020 (the 2020 Act) provides for two key types of sentence that adult offenders in England and Wales can serve in the community:

- the community order (section 200 of the 2020 Act); and
- the suspended sentence order (section 286 of the 2020 Act).

6.2 When imposing either order, courts choose one or more requirements from a list of available requirements. The list includes the unpaid work requirement, under which courts can require an offender to undertake no less than 40 hours and no more than 300 hours of work. The requirement combines punishment with providing reparation to the community, and can cover activities such as removing graffiti, clearing wasteland, and decorating public places and buildings such as a community centre.

6.3 The number of hours the court requires the offender to carry out is determined with reference to sentencing guidelines and reflects the seriousness of the offence. The work is supervised by staff employed by the Probation Service.

6.4 Unpaid work is often known as Community Payback, and the two terms can be used interchangeably. For consistency, this explanatory memorandum uses the statutory terms “unpaid work” and “unpaid work requirement”.

6.5 Unpaid work can also be imposed by the courts in other contexts. For example, it can be imposed as part of a Supervision Default Order (section 256C of the Criminal Justice Act 2003) for offenders who breach requirements of their post-sentence supervision after release from custody. It is also available to the civil courts as a requirement of an Enforcement Order (section 11J of the Children Act 1989), imposed as a penalty for breach of a Child Contact Order.

6.6 Section 155 of the Police Crime Sentencing and Courts Act 2022 inserts a new section 10A into the Offender Management Act 2007 (the 2007 Act), to create a duty on providers of probation services to consult each year on the work to be performed by offenders serving unpaid work requirements. Under section 10A, providers of probation services are required to consult with persons prescribed by the Secretary of State in regulations.

## 7. Policy background

***What is being done and why?***

7.1 The Probation Service for England & Wales is split into 12 regions, each of which amongst various functions has responsibility for the delivery of unpaid work hours directed by the courts. Local teams in each region identify and manage projects and placements which allow offenders to complete their required hours and provide appropriate reparation within their local communities.

7.2 Although there are existing non-statutory mechanisms by which probation regions engage with key stakeholders in their area, there has in the past been no statutory duty to do so and so the approach taken has varied across regions.

7.3 Unpaid work combines the sentencing purposes of punishment and reparation to communities. It can also give offenders the opportunity to learn new skills or to achieve NVQ qualifications whilst completing their placements.

7.4 To achieve the purpose of reparation, unpaid work placements need to be of benefit to the local communities in which it is served. Whilst nominated local projects are already popular with sentencers and the public, there is currently no requirement on probation officials to consult local stakeholders on the design or delivery of unpaid work. Members of communities and organisations within them, who are best placed to understand the impact of crime and the needs of their local area, therefore do not have a guaranteed means to have a say in the projects being delivered.

7.5 The intention of the new consultation duty under section 10A of the 2007 Act is to improve links between community stakeholders and the Probation Service, to ensure that unpaid work is responsive to local need and provides value to local communities. The annual consultation is not intended solely to identify which projects have been successful and extend their use. It will also help to identify future projects that can benefit the community or suit particular cohorts of offenders, ensuring that the delivery of community payback can be appropriately tailored to communities alongside supporting rehabilitation.

*What did any law do before the changes to be made by this instrument?*

7.6 There were no existing statutory duties in England and Wales relating to consultation on unpaid work requirements prior to the creation of section 10A of the 2007 Act and this instrument being proposed.

*Why is it being changed?*

7.7 The Scottish Government introduced a similar provision through section 227ZL of the Criminal Procedure (Scotland) Act 1995, requiring local authorities (which deliver probation services in Scotland) to consult prescribed persons in the community about the type of unpaid work that should be carried out by offenders.

7.8 The creation of a similar duty in England and Wales aims to improve links between probation regions and local communities. The objective is to support strong community engagement in shaping delivery of unpaid work both from key partner agencies and from members of the public. Improving the quality of placements by better understanding community needs will support offenders to make more effective reparation to local communities for the harm caused by crime, and also has the potential to support more effective rehabilitation.

*What will it now do?*

7.9 The new section 10A of the 2007 Act creates a statutory duty on probation providers to consult annually with prescribed stakeholders on the delivery of unpaid work. These regulations will require four types of organisation to be consulted:

- Police and Crime Commissioners (PCCs), and any equivalent body performing the function of a PCC (for example, the mayor in Greater London, Greater Manchester and West Yorkshire). PCCs share the Probation Service's objective to reduce reoffending and already collaborate with probation regions to do so. Including them on the list of statutory consultees will capture views from a wider range of groups than just policing, as PCCs will also be able to offer valuable insights from the electorate and regions they represent. Consulting with these bodies will provide information relating to particular offender cohorts that PCCs and their partners may be targeting with interventions or other services.
- Community Safety Partnerships (CSPs). These are statutory partnerships in England and Wales established under section 5 of the Crime and Disorder Act 1998. They are required to undertake a Strategic Assessment each year, which includes data analysis of levels and patterns of crime and disorder and findings from a residents' survey. In addition to probation, the statutory bodies that make up CSPs cover local authorities, police forces, fire and rescue authorities, integrated care boards (in England) and Local Health Boards (in Wales). Consultation with CSPs will give probation regions input at a district or unitary authority level (depending on how the CPS is established) and allow them to draw on a wide range of local data and perspectives.
- Voluntary, Community and Social Enterprise (VCSE) organisations. Local charities and similar organisations will be able to provide probation regions with a range of insight and feedback. For example, they will be able to represent the views of particular groups within the community that could benefit from unpaid work projects. They will also be able to give insight on what sort of projects might be suitable for particular cohorts of offenders, for example to ensure the work is appropriately tailored to meet the needs of that group, or to suggest how it could support development of skills that help with rehabilitation.
- Organisations representing the interests of victims of crime. Although unpaid work does not involve making reparation to the direct victim or victims of an offender, victims of crime nevertheless have a strong interest in ensuring that any wider reparation required as part of a sentence benefits communities.

Including organisations that support or otherwise work with victims will mean their views can be reflected in a probation region's choice of projects.

## 8. European Union Withdrawal and Future Relationship

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

## 9. Consolidation

9.1 These are new regulations being proposed and are not preceded by any other instrument therefore no consolidation is necessary.

## 10. Consultation outcome

10.1 The persons or class of persons detailed by these regulations have been drawn up following consultation with probation staff involved in the delivery of unpaid work, and with the Home Office, the Welsh Government, and the Association of PCCs.

## 11. Guidance

11.1 Although there is no statutory requirement to publish guidance linked to section 10A of the 2007 Act, operational guidance will be provided to Regional Probation Directors for the purpose of briefing their leadership teams and staff about delivering this new consultation duty.

## 12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies. Although VSCE and victim organisations included as part of the Prescribed Persons List will be invited by probation regions to respond to the annual consultation exercise, there is no requirement on them to respond to consultation requests. If and how they respond is a matter for each organisation. The statutory duty applies only to the Probation Service.

12.2 There is no, or no significant, impact on the public sector. Probation is already a statutory partner within CSPs and existing CSP meetings will provide a forum to consult with other partners. Similarly, probation regions have well-established links with PCCs, for example through membership of Local Criminal Justice Boards and through regular meetings, which will allow for consultation on this topic. Probation regions themselves have dedicated Heads of Unpaid Work along with teams that lead on engagement with partner organisations, meaning that delivery of this duty can be absorbed within existing resources.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no direct financial impact to any sector or bodies.

## 13. Regulating small business

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

## 14. Monitoring & review

14.1 The instrument does not include a statutory review clause.

## 15. Contact

15.1 Caroline Morrison at the Ministry of Justice (caroline.morrison@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Nick Poyntz, Deputy Director in the Change Group in His Majesty's Prison & Probation Service (HMPPS) can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Damian Hinds MP as the Minister of State for Prisons and Probation can confirm that this Explanatory Memorandum meets the required standard.