

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL JUSTICE (SENTENCING) LICENCE CONDITIONS ORDER 2005**  
**2005 No.648**

1. This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

- 2.1 This Order prescribes the conditions for inclusion in a prisoner's licence when he is released from prison.
- 2.2 Article 2 prescribes the standard conditions, which apply in the case of all prisoners released on licence, and cover matters such as residence, work and travel. These conditions are substantially the same as those included in the Criminal Justice (Sentencing) (Licence Conditions) Order 2003 (S.I. 2003/3337) ("the 2003 Order"), referred to below.
- 2.3 Article 3 prescribes other kinds of condition which may be included in the licence if the prisoner is serving a sentence of twelve months or more, or, if he is serving a sentence of less than 12 months, the condition is required for the purpose of public protection. These conditions are different from those included in the 2003 Order. The differences reflect the fact that up until April 2005 only prisoners serving a sentence of intermittent custody have had the conditions applied to them. After that date, they will also apply to prisoners serving longer sentences, and different conditions are therefore needed.
- 2.4 Article 4 revokes the 2003 Order, and includes a saving to ensure the continuing validity of conditions included in licences before 4<sup>th</sup> April 2005.

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

- 3.1 None

**4. Legislative Background**

- 4.1 This Statutory Instrument, made by the Secretary of State, is an exercise of the powers of conferred upon him by Section 250(1) and (4)(b)(ii) of the Criminal Justice Act 2003 and in relation to the first and last of those provisions having regard to the purposes of supervision of offenders set out in Section 250(8) of that Act. Section 250 requires the Secretary of State to describe the licence conditions by Order. He is required to prescribe standard conditions and any other conditions the Secretary of State may for the time being consider necessary for the protection of the public. In exercising his powers to proscribe standard conditions and any

other conditions, the Secretary of State must have regard to the following purposes of the supervision of offenders whilst on licence:

- (a) The protection of the public
- (b) The prevention of re-offending; and
- (c) Securing the successful reintegration of the prisoner into the community.

The Order contains a saving provision to ensure the continuing validity of conditions included in licences issued before 4<sup>th</sup> April 2005.

## **5. Extent**

- 5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

- 6.1 The Secretary of State is satisfied that these regulations are compatible with the European Convention on Human Rights.

## **7. Policy Background**

- 7.1 This Order is to coincide with the implementation of the sentencing provisions set out in Chapter 6 of the Criminal Justice Act 2003. The Secretary of State is obliged to prescribe, by order, the standard and other conditions he wishes to apply to licences in respect of the release of determinate sentence prisoners.
- 7.2 The 2003 Order sets out six standard conditions, which cover all the standard requirements of probation supervision within the community. This includes requirements that the offender complies with reporting instructions, lives at an approved address, is of good behaviour, and agrees to receive home visits from his supervising officer. This instrument alters the 2003 conditions to the effect that the standard condition not to travel abroad without the prior approval of the supervising officer does not apply to prisoners who are being deported pursuant to the Immigration Acts 1971 and 1999.
- 7.3 The 2003 Order sets out a list of other conditions which can be applied at the discretion of the Secretary of State. This instrument amends this provision by introducing a list of requirements from which licence conditions can be derived. The prescribed list of requirements is intended to cover all possible areas of supervision. When preparing for the release of a prisoner sentenced under the provisions of the Criminal Justice Act 2003, supervising officers will be required to recommend appropriate licence conditions from the prescribed list, which in turn, must be approved by the Governor of the releasing prison, acting on behalf of the Secretary of State.
- 7.4 Pursuant to Section 238 of the Criminal Justice Act 2003 the sentencing court also has the power to recommend licence conditions, which, in its view, should be

included in any licence granted to the offender. The Secretary of State in return must have regard to any recommendation made by the sentencing court.

## **8. Impact**

- 8.1 This Order will apply to any prisoner released under the provisions for Chapter 6 of the Criminal Justice Act 2003. This includes those prisoners who are released under the provisions of the Criminal Justice Act 2003 who are subsequently recalled under the provisions of the 2003 Act and therefore fall to be re-released under the provisions of the latter Act. The list of requirements reflect existing practice. Prior to the Criminal Justice Act 2003, there was no statutory requirement to prescribe licence conditions by order.

## **9. Contact**

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Home Office  
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