

**EXPLANATORY MEMORANDUM TO
THE CONTRACTED-OUT PRISONS (SPECIFICATION OF RESTRICTED
ACTIVITIES) ORDER 2009**

2009 No. 576

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 This Order specifies certain custodial duties that may be undertaken by workers in contracted-out prisons (being persons who work at a prison other than a prisoner custody officer) where the worker is authorised by the director to carry out that activity.

2.2 The duties that workers may be authorised to carry out are based on certain duties of prisoner custody officers that do not require the full range of skills and training of a prisoner custody officer.

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

3.1 None.

4. Legislative Context

4.1 Section 84 of the Criminal Justice Act 1991 (the 1991 Act) provides the Secretary of State with the power to enter into contracts with another person for the running of a prison.

4.2 Section 85 of the 1991 Act creates the role of a director (similar to that of a governor in a public sector prison) and a controller (a Crown Servant who will monitor the delivery of the contract and perform certain other functions in the prison on behalf of the Secretary of State).

4.3 Section 86B of the 1991 Act (as inserted by section 18 of the Offender Management Act 2007) provides the Secretary of State with the power, by order, to specify descriptions of certain custodial activities that a director of a contracted prison may authorise workers to undertake. This is the first use of the power.

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 1991 Act provides the legislative basis for the Secretary of State to enter into contracts for the private operation of prisons in England and Wales. It specifies the roles and responsibilities of the staff who work in such prisons and the circumstances in which their powers apply.

7.2 In the years since 1991 private sector involvement in the delivery of prisons has increased and there are now eleven such establishments in operation. Since 1991, the private sector has shown an effective track record in delivering custodial services.

7.3 This Order provides directors of contracted out prisons with more flexibility in deployment of workers (and, consequently, of prisoner custody officers). The deployment of such workers in contracted-out prisons is consistent with the public sector use of Operational Support Grades, and the power contained in section 86B of the 1991 Act, together with this Order, provides directors with a similar level of operational flexibility to governors of public sector prisons. Future revisions will be considered to maintain the similarity with the public sector estate.

7.3 The 1991 Act describes the powers and duties of prisoner custody officers and this order provides details of activities, listed in the Schedule to the Order, that may be undertaken by persons authorised by the director who are not prisoner custody officers.

8. Consultation Outcome

8.1 This Order gives effect to the Offender Management Act 2007 to allow authorised persons to do certain restricted activities which were the subject of debate at the time of the passage of that legislation. The substantive list of activities brings the contracted-out prisons into line with the equivalent staff in public sector prisons; therefore a consultation has not been undertaken.

9. Guidance

9.1 Guidance will be issued to the contracted-out prisons in due course.

10. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 This legislation does not apply to small business.

12. Monitoring and review

12.1 The list of duties will be kept under review to ensure that they remain appropriate, and in particular a review of duties of authorised persons in the contracted-out estate will be considered if the duties of the equivalent staff in the public sector prisons is revised.

13. Contact

13.1 Sue Wheatley at the Ministry of Justice Tel: 01733 440480 or email: sue.wheatley5@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.