

**EXPLANATORY MEMORANDUM TO**  
**THE OFFENDER REHABILITATION ACT 2014 (INCIDENTAL PROVISION) ORDER**  
**2015**

**2015 No. 774**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Offender Rehabilitation Act 2014 (“the ORA 2014”) creates a new period of post sentence supervision that applies to offenders in England and Wales who are released from custodial sentences of more than 1 day or less than 2 years. It gives magistrates’ courts the power to deal with breaches of the new supervision period, and the Crown Court the power to deal with an appeal against a decision of a magistrates’ court. It also allows for a period of post sentence supervision to be transferred from England and Wales to be served in Scotland or Northern Ireland, and for courts in those jurisdictions to deal with a breach of a transferred supervision period.

- 2.2 In Northern Ireland, the equivalent to a magistrates’ court in England and Wales (for the purposes of this Order) is a court of summary jurisdiction. Appeals against a decision of a court of summary jurisdiction (magistrates’ court) lie to the county court rather than to the Crown Court as is the case in England and Wales. This Order applies the relevant interpretation legislation in Northern Ireland so as to clarify that in dealing with an appeal against a lower court’s decision on a breach of a post sentence supervision period, the county court can exercise all of the powers, authority and jurisdiction of the court of summary jurisdiction, including reversing the decision or taking any other steps it deems necessary.

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

- 3.1 The ORA 2014 provides for an appeals process to the appropriate superior court in Northern Ireland for a post sentence supervision period that has been transferred to be served there. The provision made by this Order makes an incidental change to clarify the powers which the county court in Northern Ireland will have to deal with any such appeal. As such, this Order is designed to give full effect to provisions approved by Parliament in the ORA 2014.

#### 4. Legislative Context

- 4.1 The ORA 2014 amends the Criminal Justice Act 2003 (“the CJA 2003”) to create a new post sentence supervision period for offenders in England and Wales who are released on licence from custodial sentences of more than one day but less than two years. The purpose of the post sentence supervision period is the rehabilitation of the offender. The Secretary of State can specify requirements on the offender as part of the post sentence supervision period.
- 4.2 New section 256AC of the CJA 2003 provides for what happens when an offender fails to comply with a requirement imposed as part of a post sentence supervision period. The offender may be brought before a magistrates’ court, which has the power to commit the offender to prison, to order the offender to pay a fine, or to make a supervision default order (involving either unpaid work or an electronically-monitored curfew).
- 4.3 Section 256A(11) of the CJA 2003 provides for the offender to appeal to the Crown Court against an order made by the magistrates’ court.
- 4.4 The ORA 2014 also amends Schedule 1 to the Crime Sentences Act 1997 (“the CSA 1997”) to provide for a post sentence supervision period to be transferred to be served in other jurisdictions in the United Kingdom. Under Schedule 1 a transfer can be made on either a restricted or an unrestricted basis:
  - Restricted: the offender remains subject to the provisions of the exporting jurisdiction, which retains overall control of the sentence. This means that the offender can be subject to post supervision even if the receiving jurisdiction does not have legislation allowing for post sentence supervision, as the legislation of the exporting jurisdiction can be applied.
  - Unrestricted: the release and recall legislation of the receiving jurisdiction applies and where there is no equivalent post sentence supervision period in that jurisdiction, the post sentence supervision period available under the ORA 2014 cannot be applied to the offender.
- 4.5 The ORA 2014 amended paragraph 9 of Schedule 1 to the CSA 1997 to provide that where an offender subject to post sentence supervision is transferred to Northern Ireland on a restricted basis, the breach arrangements in section 256AC of the CSA 2003 will apply and will be exercisable by the relevant Northern Ireland court. The new paragraph 9 provides that, for these purposes, a reference to a magistrates’ court is to be read as a reference to a court of summary jurisdiction.
- 4.6 Similarly, for the purposes of an appeal against an order made in response to breach of a post sentence supervision period, new paragraph 9 provides that a reference to the Crown Court is to be read as a reference to the county court.

4.7 This Order provides for the reference to the county court in new paragraph 9 to be construed as being subject to Article 22 of the Interpretation Act (Northern Ireland) 1954. The effect of this is to make clear that, where a county court is hearing an appeal against an order imposed in response to breach of a transferred post sentence supervision period, it has the power to exercise all of the powers, authority and jurisdiction of the court of summary jurisdiction. This includes the power to confirm, reverse or vary the decision of the lower court, to remit the appeal, or to make such order for costs as it thinks proper.

4.8 It is necessary to make this clear in this case because Article 22 of the Interpretation Act (Northern Ireland) 1954 only applies to Acts passed by the Northern Ireland Assembly of Parliament. In relation to the Crown Court in England and Wales, the Crown Court can rely on section 48 of the Senior Courts Act 1981, which gives it general powers to deal with any appeal.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England, Wales and Northern Ireland.

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

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

## **7. Policy background**

7.1 The ORA 2014 makes significant changes to the sentencing and release framework for offenders. It extends release on licence – which until relevant provisions of the ORA 2014 came into force on 1 February 2015 only applied to offenders released from custodial sentences of 12 months or more – to sentences of more than 1 day but less than 12 months. It also applies a post sentence supervision period to any offender released subject to a licence period of less than 12 months. As prisoners are released automatically at the halfway point of their sentence, with the licence lasting for the second half of the sentence, any sentence of less than 2 years will therefore have a licence of less than 12 months. In such cases, a post sentence supervision period applies such that the total of the licence and the supervision period equals 12 months.

7.2 The changes made by the ORA 2014 to the supervision of offenders in the community are part of a wider set of reforms known as the Transforming Rehabilitation programme. The objectives of this programme are to:

- Open up delivery of probation services for low and medium-risk offenders to a range of rehabilitation provider across the public, voluntary and private sectors.

- Introduce new payment incentives to give providers flexibility to do what works, but only paying them in full for reductions in reoffending.
- Create a new public sector National Probation Service, supervising high-risk offenders and providing advice to courts.
- Extend statutory supervision after release from custody to the 45,000 offenders released every year from custodial sentences of less than 12 months.
- Introduce a nationwide ‘through the prison gate’ resettlement service, so that most offenders are given continuous support by one provider from custody into the community.

7.3 As a result of the Transforming Rehabilitation reforms, probation services in England and Wales have since 1 February 2015 been delivered by:

- The National Probation Service, which is responsible for supervising high-risk offenders,
- 21 Community Rehabilitation Companies, owned by a range of public, private and voluntary organisations, and responsible for supervising low and medium-risk offenders.

7.4 The provisions in Schedule 1 to the CSA 1997 for restricted and unrestricted transfer of different types of post-release supervision have already been in operation for a number of years for offenders released from custody subject to licence. Existing guidance for probation staff in England and Wales on dealing with requests by offenders to transfer to another United Kingdom has been updated to reflect the changes made by the ORA 2014, and has been published on the probation intranet and the Ministry of Justice website.<sup>1</sup> The guidance applies to both the National Probation Service and to the 21 Community Rehabilitation Companies (which are contractually bound to follow this and any other mandatory probation instruction issued by the Ministry of Justice).

## **8. Consultation outcome**

8.1 Ministry of Justice officials have consulted their counterparts in the Department of Justice for Northern Ireland on this instrument, who are content with this approach to clarifying the powers of the county court.

## **9. Guidance**

9.1 The Department of Justice for Northern Ireland will advise courts and criminal justice agencies of the relevant provisions of the ORA 2014.

## **10. Impact**

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

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<sup>1</sup> <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2015/psi-08-2015-pi-07-2015-permanent-resettlement-outside-england-and-wales-of-offenders.pdf>

10.2 The instrument makes an incidental change to clarify the powers of the county court, rather than any substantive change to the process already prescribed by the ORA 2014 for transfer of a post sentence supervision period to Northern Ireland. There is hence no additional impact on the public sector over and above that of the transfer provisions set out in the ORA 2014 as a result of this instrument.

10.3 Accordingly, an Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 As the instrument makes no substantive change to the operational processes for transfer of a post sentence supervision period to Northern Ireland, no monitoring or review is necessary.

## **13. Contact**

13.1 Nick Poyntz at the Ministry of Justice (tel: 020 3334 3555 or email: [nick.poyntz@justice.gsi.gov.uk](mailto:nick.poyntz@justice.gsi.gov.uk)) can answer any queries regarding the instrument.