

EXPLANATORY MEMORANDUM TO
THE SENTENCING ACT 2020 (SPECIAL PROCEDURES FOR COMMUNITY AND
SUSPENDED SENTENCE ORDERS) REGULATIONS 2024

2024 No. 654

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. Declaration

2.1 The Rt Hon Edward Argar MP, Minister at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Stephen O'Connor, Deputy Director for Probation Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Harriet Braithwaite at the Ministry of Justice email: Harriet.Braithwaite@Justice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Sentencing Act 2020 (Special Procedures for Community and Suspended Sentence Orders) Regulations 2024 make provision for piloting special procedures for certain community orders and suspended sentence orders by stipulating the launch date, pilot location, eligibility criteria for pilot participants and offences to which the orders may relate. These special procedures are known as a “problem-solving approach” and the initiative as “Intensive Supervision Courts” (ISCs).

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 In 2016, a Working Group was established by the then Lord Chancellor, the Rt Hon Michael Gove MP, and the then Lord Chief Justice, which concluded that problem-solving approaches should be tested in courts in England and Wales. It was also recommended that core components of the ISC pilot should include regular reviews of progress by a single judge, graduated incentives and sanctions and judicial power to initiate breach proceedings.

- 5.2 The Government committed in the Sentencing White Paper 2020 to pilot a problem-solving approach in up to five courts in England and Wales. The legislative changes to the Sentencing Act 2020 were then introduced by the Police, Crime, Sentencing and Courts (PCSC) Act 2022 which followed the 2016 Working Group recommendations and made provision for special procedures to apply to certain community orders and suspended sentence orders and for there to be a trial period for such procedures.
- 5.3 In order to trial the measures introduced into the Sentencing Act 2020 by the PCSC Act 2022, secondary legislation is required to designate pilot sites. In June 2023, two substance misuse ISCs were established at the Teesside Crown Court and the Liverpool Crown Court and one female offender ISC was established at the Birmingham Magistrates' Court, after secondary legislation was passed in May 2023. Further secondary legislation is required to launch a further substance misuse ISC site at Bristol Crown Court, to which this Explanatory Memorandum relates.
- 5.4 This ISC pilot forms a key part of the Government's 10-year Drug Strategy commitment to "deliver a world-class treatment and recovery system" through improving the criminal justice's response and is funded by the Drug Strategy budget allocated to the MoJ. Tackling drug-related offending is a priority for the Government, and the ISC pilot forms an important part of this. The Bristol ISC will therefore be a further substance misuse site, delivering on Sentencing White Paper and Drug Strategy commitments.
- 5.5 The principal aim of the pilot is to test and properly evaluate whether problem-solving approaches in England and Wales can achieve their desired effect of reducing reoffending and improving the health and wellbeing of the individuals involved. The need to build this evidence-base is outlined in further detail in the Parliamentary Office of Science and Technology (POST) Note on problem-solving courts (now known as ISCs).¹ The current plans for evaluating ISCs are based on four locations, and so launching an ISC at the Bristol Crown Court is key to increase both the number of offenders going through the pilot, and the geographical spread of pilot sites, improving robustness of the evaluation.
- 5.6 Bristol Crown Court was identified as a suitable substance misuse pilot location, following agreement by HMPPS, HMCTS and local judiciary as operationally viable. In November 2023, the Bristol Crown Court was approved as the fourth ISC site following approval from the Senior Presiding Judge and the Rt Hon Damian Hinds.

What was the previous policy, how is this different?

- 5.7 Like the Teesside Crown Court and Liverpool Crown Court ISCs, the substance misuse ISC at the Bristol Crown Court is intended for offenders with a substance misuse problem who would otherwise face a sentence, following conviction for an offence, of up to two years in prison. The legislated eligibility and exclusion criteria are detailed in 6.2 and 6.3 respectively. However, in addition to these, to be suitable for a substance misuse ISC, individuals must: be 18 years of age or older on the day of conviction; be convicted of an offence that is linked to their substance misuse; be assessed by probation and the treatment provider as having drug and/or alcohol misuse problems linked to their offending behaviour; reside within the Bristol City Council local authority area; and consent to the sharing of their personal information with the multi-agency team, as well as agree to engage with service providers for treatment. Importantly, the offender must also be assessed by probation and the

¹ POSTNote 700, Problem-solving Courts, by Aikaterini Mentzou and Natasha Mutebi, 14 July 2023.

judiciary as motivated to address their problems and indicate a willingness to commit to the intensity of the ISC programme.

- 5.8 The ISCs test an enhanced approach to community-based sentences as opposed to custody, targeting the root cause of offending behaviour by addressing underlying needs. This is done through the provision of wraparound interventions delivered by a multi-agency team, increased oversight by a single judge, and a graduated system of privileges and sanctions in response to progress and compliance.
- 5.9 This approach is supported by new legislative provisions, which will enable the judiciary to initiate breach proceedings as part of regular review hearings instead of this being the sole responsibility of the Probation Service. There will be an expansion of the use of the drug testing requirement to ascertain whether there is any drug or psychoactive substance in the offender's body during the period specified by the order. This goes beyond drug rehabilitation requirements (DRRs) and will include offenders who may not be dependent or do not reach the threshold for a DRR but whose drug misuse drives their offending behaviour. It will also enable the use of an immediate, short committal to prison for up to 28 days that can be used up to a maximum of three times throughout the course of an ISC order, as a sanction for non-compliance.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Section 153 of, and Schedule 14 to, the PCSC Act 2022 introduced amendments to the Sentencing Act 2020 to make provision for special procedures to be used for certain community orders and suspended sentence orders. These special procedures include measures enabling periodic review of such orders, together with powers of the Court to hold a breach hearing where it finds a breach has occurred and commit the individual to custody for up to 28 days where an order has been breached.
- 6.2 Section 395A of the Sentencing Act 2020 explains that Orders qualifying for special procedures must be those of a description specified in Regulations made by the Secretary of State. These Regulations are made under the powers in section 395A of the Sentencing Act 2020 and set out the conditions that must be met for a community order or a suspended sentence order made by the Bristol Crown Court to qualify for special procedures. Offenders must be aged 18 or over at the time of conviction and must not be subject to notification requirements under the Sexual Offences Act 2003. All offenders who meet the initial eligibility criteria, outlined in 5.7, in the pilot area will be considered for inclusion in the pilot.
- 6.3 The instrument introduces offence exclusions to be applied to this pilot site as follows: any firearms offences, the use of a knife or offensive weapon in commission of any offence, and sexual offences. However, where an offender is convicted of possession of a knife or offensive weapon and it is their first-time possession offence they may be included in the pilot so long as they do not have a conviction for a previous firearm or knife or weapon offence.
- 6.4 The Regulations provide that that the pilot period for the Bristol ISC is 18 months starting with the date that the Regulations come into force.
- 6.5 Alongside these special procedures is the ability to impose a standalone drug testing requirement for those who do not meet the conditions of a drug rehabilitation requirement (DRR) or for orders which included a DRR which has ended. This will be

enacted by a notice issued to the court by the Secretary of State, as required by paragraph 22B(3) of Schedule 9 to the Sentencing Act 2020.

Why was this approach taken to change the law?

- 6.6 This is the only way that an ISC pilot could be introduced in the Bristol Crown Court.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 No public consultation has been carried out in relation to these Regulations. There is no requirement to consult in relation to determining which courts would be within the pilot, which offenders would be eligible or which offences would be in scope. Having taken into account evidence from the Working Group, the operational details of how the pilots will operate are not matters which lend themselves to public consultation.
- 7.2 The Sentencing White Paper 2020 set out a clear agenda for reform by the government that was then taken forward, as necessary, in the PCSC Act 2022. The ISC provisions contained in that Act were subject to the usual robust scrutiny of both Houses and received cross party support.
- 7.3 Consultation has taken place between the MoJ, HMCTS, HMPPS, the Senior Presiding Judge and Ministers to jointly agree the suitability of the Bristol Crown Court for the ISC pilot.

8. Applicable Guidance

- 8.1 Operational guidance to support the implementation of the pilot within the pilot site is being produced in conjunction with local colleagues in Bristol.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 An Impact Assessment was prepared for the PCSC Act 2022, which covers the launch of all ISC pilot sites and therefore covers this instrument. This impact assessment, 'IA: Sentencing, Release, Probation and Youth Justice Measures',² is available on the legislation.gov.uk website. Paragraph 9.5 outlines the key public sector impacts.
- 9.2 In piloting ISCs, this legislation is expected to positively impact MoJ and its agencies through: improving judicial confidence in community sentences; increasing offender compliance; reducing reoffending; and reducing the use of custody.
- 9.3 The number of ISC cases diverted from custody is contingent on how the sentencers utilise these new powers, how offenders comply with new supervision arrangements, and how many breach cases result in offenders returning to custody. This is currently unquantifiable for Bristol but, as of February 2024, 56% of ISC cases at existing substance misuse sites had been diverted from custody. A final number will be included as part of the impact evaluation following the pilot's conclusion.
- 9.4 Subject to a feasibility assessment, the MoJ will run an impact and economic evaluation using live operational data, which is currently being monitored and regularly reported internally, after the conclusion of the pilot to assess how well the

² https://assets.publishing.service.gov.uk/media/6273c113e90e0746cd3f103c/MOJ_Sentencing_IA_2022_.pdf

pilot has worked and whether it is a cost-effective sentencing option. This is detailed further in paragraph 10.3.

Impact on businesses, charities and voluntary bodies

- 9.5 The legislation does not impact businesses (including small or micro businesses), charities or voluntary bodies.
- 9.6 The impact on the public sector will chiefly concern MoJ and its agencies. For MoJ, piloting the ISC will incur costs for monitoring and evaluation, as well as for funding operational practitioners to run the pilot itself. For HMCTS and the Legal Aid Agency, the ISC model will differ from the current system (e.g. there will be more regular reviews hearings) and lead to additional costs. Whilst increased involvement of judiciary aims to increase confidence in sentencing, the ISC caseload will be met within current capacity. This will be kept under review to ensure it is manageable for the Bristol Crown Court.
- 9.7 For HMPPS, whilst ISC is intensive for probation, MoJ will fund the ISC probation team in Bristol to manage this. pilot will remove some cases from business-as-usual probation caseload and alleviate some workload from probation in court.

What is the approach to monitoring and reviewing this legislation?

- 9.8 We launched the ISC pilot with the aim to evaluate fully a problem-solving approach in England and Wales, as the pilot is the first in the UK to make use of legislative provisions to implement a range of problem-solving components. The pilot is subject to a robust monitoring and evaluation programme and findings will be made available in a series of published reports. The evaluation will assess a range of outcomes including offenders' drug usage, health and wellbeing indicators, use of prison, compliance of offenders, judicial confidence, and reoffending.
- 9.9 A series of monitoring metrics are being collected as part of the monitoring and evaluation framework. The externally commissioned process evaluation is currently underway, and the interim report is due to be published in summer 2024. This is being conducted by a consortium of independent research firms led by CFE Research and will assess how well the pilot has been implemented. This report will provide some indication of short-term outcomes resulting from the pilot, such as attendance rates at appointments, breach rates and the proportion of early unsuccessful terminations of sentences. A final report will be published at the pilot's conclusion in summer 2025.
- 9.10 The monitoring and evaluation framework also includes proposals for an impact and economic evaluation. They will help measure the impact of ISCs and the value for money that they offer respectively. Our ability reliably to undertake these will depend on several factors such as sample sizes achieved and quality of available data. Subject to a feasibility assessment these will be completed at the end of the pilot. The impact evaluation will be conducted internally and will focus on measuring and quantifying the expected impact of the ISCs (as mentioned in paragraph 9.3) such as reoffending outcomes and health and wellbeing outcomes. The economic evaluation will weigh up the costs and benefits of ISCs compared to alternative sentencing options. These reports will be published around two years after the conclusion of the pilot to allow time for reoffending data to be collected.
- 9.11 Both Data & Analysis in MoJ and CFE Research have their own quality-assurance processes. Furthermore, both process evaluation reports are subject to an advisory

group, comprising of academics and other government officials, providing an added layer of scrutiny and quality-assurance.

- 9.12 Should there be a need to review and make any changes to the scope of this pilot site, further secondary legislation will be required. The above-outlined programme of monitoring and evaluation is in place to inform such decisions. It will also inform decisions regarding the rollout of further ISC sites. The funding allocated will be fully consumed by the four sites, and so expansion beyond the currently identified pilot sites will require extra funding. Any future decisions regarding the extent and scale of the ISC pilot, will ultimately be taken by Ministers.

Part Three: Statements and Matters of Particular Interest to Parliament

10. Matters of special interest to Parliament

10.1 None.

11. European Convention on Human Rights

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

12. The Relevant European Union Acts

This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).