

**EXPLANATORY MEMORANDUM TO
THE COMMUNITY ORDER (REVIEW BY SPECIFIED COURTS IN LIVERPOOL
AND SALFORD) ORDER 2006**

2006 No. 1006

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 The above Order is made in exercise of the powers conferred by section 178 of the Criminal Justice Act 2003. It allows the Community Justice Centre in Liverpool and the magistrates' court in Salford to provide for the periodic review of community orders that they make or which come before them. It also provides a power to amend the requirements of the order at a review hearing and to alter the review arrangements.

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

3.1 None.

4. Legislative Background

4.1 This is the first use of the power contained in section 178 of the Criminal Justice Act 2003 which was itself brought into force on 7 March 2005. This section allows the Secretary of State, by order, to give criminal courts the power to review community sentences made under the Criminal Justice Act 2003 and to make provisions relating to the frequency and conduct of those reviews and the courts' powers upon review. In particular, orders made under this section may make provision in relation to community orders which correspond to any provisions made in sections 191 and 192 of the Criminal Justice Act 2003 in relation to periodic reviews of suspended sentence orders.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister of State for Criminal Justice and Offender Management, the Rt Hon Baroness Scotland of Asthal PC QC, has made the following statement regarding Human Rights:

“In my view the provisions of the Community Order (Review by Specified Courts in Liverpool and Salford Court) Order 2006 are compatible with the Convention rights”.

7. Policy background

7.1 The Criminal Justice Act 2003 introduces new sentencing options for courts. Two of these, community orders and suspended sentence orders, were commenced on 4 April 2005. The Act contains provisions which allow courts making suspended

sentence orders to include in those orders a periodic review of the offender's progress towards completing the requirements of the order. It also sets out how those reviews should be conducted and what the court's powers are in relation to the frequency of the reviews and its powers to amend an order on review. These provisions were also commenced on 4 April 2005.

7.2 The 2003 Act also contains an order-making power in section 178 which allows the Secretary of State to make such reviews available in relation to community orders. This order exercises that power by giving the courts specified in paragraph 2.1 above the power when making a community order or when a community order for which they are responsible comes before them to include a requirement that the order be subject to periodic review. Such reviews will take place at specified intervals and will allow the court to monitor progress of the offender in relation to the requirements of the order. The reviewing court has the power to change the review arrangements and to amend the requirements of the community order subject to specified limitations. In particular, the Order prevents the court from imposing different or more onerous requirements without the consent of the offender and also prevents it from extending the period specified in the community order within which all the requirements of the order must have been complied with. If the community order consists of a drug rehabilitation requirement and another requirement, the drug rehabilitation requirement can only be reviewed in accordance with section 210 of the Criminal Justice Act 2003. But the order allows the courts involved in the pilot to review the other requirement.

7.3 It was the Government's intention to consider the effectiveness and resource implications resulting from the use of court reviews of suspended sentence orders before deciding whether or not to exercise the powers to allow court reviews of community orders generally. However, the Government considers that the courts named in the Order provide an ideal opportunity to test these measures given the close interest in community justice that they take in the sentences that they impose. These pilots will help to inform the decision on whether to allow periodic reviews of community orders more widely.

7.4 The purpose of piloting in Liverpool is to ensure that the judge has the full range of powers needed to give effect to the essential problem-solving element of community justice. Restricting the provision to a single location will enable its effectiveness to be tested, especially in comparison with outcomes from other courtrooms in Liverpool, without raising the potentially significant resources issues of making it available to a large court complex. However, the North Liverpool Community Justice Centre environment is unique and piloting s178 there is not guaranteed to provide a clear assessment of the resources implications of wider implementation. Piloting s178 in the mainstream magistrates' court in Salford will give that opportunity in a relatively small-scale court complex and provide further comparison between its outcomes and those of the mainstream magistrates' courts in Liverpool. The Order allows for a court involved in the pilot to direct for review to occur in the other court mentioned in article 2 (2) of the Order, i.e. either Salford magistrates or North Liverpool Community Justice Centre (subject to the limitation that a magistrates court cannot include provision for review by the Crown Court when making a community order). This will be beneficial, in a case where an offender from either pilot area commits his offence away from his home area, but in the respective jurisdiction of the other pilot area.

8. 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.

8.2 The main impact on the public sector is that there will be more court hearings in the pilot areas in relation to community orders to enable review of progress of community orders. However, if these are effective there should be a decline in the number of hearings in relation to breach of community orders. There will also be an effect on probation service workload as they will need to provide the courts with progress reports, but again this might be expected to be offset to some extent by reduced breach proceedings. There may also be some small costs to the Criminal Defence Service as offenders required to attend review hearings may qualify for legal aid subject to the justice test. However, it is not expected that attendance will be required in many cases.

9. Contact

9.1 Spencer Draper at the Home Office (Tel: 020 7035 8371 or e-mail: spencer.draper2@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.