

# **MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019**

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## **EXPLANATORY NOTES**

### **THE STRUCTURE AND A SUMMARY OF THE ACT**

#### **Part 1 – Electronic Monitoring Etc.**

##### **Obligations and compliance**

##### *Section 12 – Standard obligations*

48. Section 12 sets out the standard obligations placed on a person in relation to an electronic monitoring requirement made either by the court under section 1(1) or by the Scottish Ministers under section 5(1).
49. Section 12(2) provides that a monitored person must obey the instructions given by the designated person on how the approved device must be worn or used so as to enable electronic monitoring for the purposes set out in section 1(4) or 5(4).
50. Section 12(3) provides that a monitored person must not tamper with or intentionally damage or destroy the device, nor cause or permit someone else to tamper with, damage or destroy the device.

##### *Section 13 – Deemed breach of disposal or conditions*

51. Section 13 deals with the consequences of a person failing to comply with the obligations set out in section 12.
52. Section 13(1) provides that an electronic monitoring requirement made under section 1(1) is to be regarded as if it is part of the relevant disposal listed in section 3(2). It further provides that any contravention of the obligations set out at either section 12(2) (to obey instructions given by a designated person) or 12(3) (not to tamper with or intentionally damage the device) is to be taken as a breach of the relevant disposal.
53. Section 13(2) provides that in the event a person contravenes the section 12 obligations, any statutory provisions as to breach of the relevant disposal are triggered. This allows the court to utilise the breach procedures that attach to the relevant disposal (including any powers to vary or revoke the relevant disposal following a breach) where the electronic monitoring requirement has been breached by the person.
54. Section 13(3) provides that, where it is an offence to breach the underlying disposal, that offence cannot be committed by breaching the section 12 obligations. For example, a person who removes the electronic tag, and thereby breaches the associated disposal by virtue of section 13(1)(b), does not commit an offence by doing so, even if a breach of the associated disposal constitutes an offence.
55. Section 13(4) provides that an electronic monitoring requirement made under section 5(1) is to be regarded as if it is part of the relevant licence conditions listed

in section 7(1). It further provides that any contravention of the obligations set out at either section 12(2) (to obey instructions given by a designated person) or 12(3) (not to tamper with or intentionally damage the device) is to be taken as a breach of the relevant conditions.

56. Section 13(5) provides that any statutory provisions for breach of the associated conditions or the licence in which they are contained are therefore triggered by any such failure to comply with the section 12 obligations. In addition, section 13(5) also provides that any statutory provisions for recall to prison or another place in consequence of a breach of the conditions or licence are also triggered by any such failure to comply with the section 12 obligations.
57. Section 13(7) provides that any references to provisions relating to breach of something include provisions relating to variation or revocation of it in consequence of breach of it.

#### ***Section 14 – Documentary evidence at breach hearings***

58. Sections 14(1) and 14(2) provide that the rule on documentary evidence in section 14(3) applies in relation to a hearing on the issue of whether a person subject to an electronic monitoring requirement has breached the associated disposal, the associated conditions or the section 12 obligations.
59. Section 14(3) provides that evidence in relation to such a breach may be given by way of a document which contains both a statement produced by an approved device or linked equipment showing information relevant to the issue, and a certificate signed on behalf of the designated person to state that the information is accurate.
60. Section 14(4) provides that the evidence given by way of such a document might include, by way of example: information about the whereabouts of the device; the connectivity, working or wearing of the device at a particular time; or the presence or level of alcohol, drugs or other substances in the wearer or user's body, at a particular time.
61. Section 14(5) provides that the document is sufficient evidence of everything contained in it and is only admissible if it is served on the person to whom the hearing relates prior to the start of the hearing.