

EXECUTIVE NOTE

THE RESTRICTION OF LIBERTY ORDER (SCOTLAND) REGULATIONS 2006 (SSI 2006/8)

1. The above Regulations were made in exercise of the powers conferred by sections 245A(8) and 245C(3) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). The instrument is subject to the negative resolution procedure as inserted by section 5 of the Crime and Punishment (Scotland) Act 1997.

Background

2. Restriction of liberty orders (“RLOs”) require an offender to be restricted to a specific place for a maximum period of 12 hours per day up to a maximum of 12 months and/or from a specified place or places for 24 hours a day up to 12 months. The legislation also provides for the use of electronic monitoring equipment to monitor the offender’s compliance with a RLO. The Restriction of Liberty Order (Scotland) Regulations 1998 (S.I. 1998/1802) (“the principal Regulations”), made under section 245A(8) and 245C(3) of the 1995 Act, came into force on 17 August 1998. They were subsequently amended by The Restriction of Liberty Order (Scotland) (Amendment) Regulations 1999 (SI 1999/144), The Restriction of Liberty Order (Scotland) (Amendment) Regulations 2002 (SSI 2002/119) and the Bail Conditions (Specification of Devices) and Restriction of Liberty Order (Scotland) (Amendment) Regulations 2005 (SSI 2005/142).

3. Section 245A(8) of the 1995 Act empowers Ministers to make regulations by statutory instrument prescribing:

- which courts, or classes of court, may make RLOs ;
- what method or methods of monitoring compliance with such orders may be specified in any such order by any such court; and
- the class or classes of offenders in respect of which RLOs may be made.

4. Section 245C(3) empowers Scottish Ministers to make regulations by statutory instrument to specify the devices which may be used for the purposes of remotely monitoring the compliance of an offender with the requirements of a RLO.

5. The electronic monitoring service is currently provided by Reliance Monitoring Services, using devices manufactured by Elmotech Ltd. Following a competitive tendering exercise, Serco Ltd won the contract to provide the electronic monitoring service from 1st April 2006. Serco Ltd will be using devices manufactured by Premier Geografix Ltd (PGL). The PGL equipment works in the same way as the Elmotech equipment currently in use.

6. The purpose of these Regulations is to revoke the principal Regulations (SI 1998/1802) and make a new set of regulations specifying the courts, which may impose RLOs and the methods of compliance, and devices, which may be used in monitoring compliance with an RLO. It was decided to adopt this approach, rather than simply amend the principal Regulations again, to avoid any possibility of confusion because of the number of amendments to the principal Regulations.

7. There is no change to the courts or methods of compliance specified in these Regulations from those in SI 1998/1802. There is however a change to the specification of the devices, which may be used for the purposes of remotely monitoring an offender's compliance with an RLO as, explained in paragraph 5 above.

8. These Regulations will come into effect on **20 February 2006** to enable the newly specified devices to be used prior to the start of the new contract. This is part of the equipment swap-out arrangements agreed between the two companies. In order to ensure uninterrupted monitoring of offenders, each Elmotech tag and home monitoring unit will be removed from each offender subject to an Order that extends past 31st March 2006 and will be replaced by a PGL tag and home monitoring unit. This will be done throughout March and will help ensure a smooth transition from the current contractor, Reliance Monitoring Services, to the new contractor, Serco Ltd. Reliance Monitoring Services will still be responsible for monitoring offenders until 31st March.

9. The principal Regulations (SI 1998/1802) will be revoked on 16th April 2006. This is to allow for the unlikely event that Elmotech tags and equipment are not replaced by PGL equipment in time for the start of the new contract on 1st April 2006, and will ensure that all offenders subject to electronic monitoring continue to be monitored until the replacement is effected.

Financial Effects

11. A regulatory impact assessment has not been prepared in this instance, as the change in contractor will have no impact on Scottish businesses.

Other regulations

10. Similar regulations specifying the new electronic monitoring are also being made in respect of the movement restriction conditions of bail pilot (The Bail Conditions (Methods of Monitoring Compliance and Specification of Devices) (Scotland) Regulations 2006) and for use in Intensive Support and Monitoring Services (ISMS).

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