

EXECUTIVE NOTE

THE RESTRICTION OF LIBERTY ORDER (SCOTLAND) (AMENDMENT) REGULATIONS 2008 SSI/2008/307

1. These Regulations are made in exercise of the powers conferred by section 245C(3) of the Criminal Procedure (Scotland) Act 1995 (c.46) (“the 1995 Act”). The instrument is subject to the negative resolution procedure.
2. The Regulations amend the Restriction of Liberty Order (Scotland) Regulations 2006 (S.S.I. 2006/ 8) (“the 2006 Regulations”).

Background

2. Sections 3AA, 12AA and 12AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (“the 1993 Act”) (c.9), together provides for the early release of prisoners on a licence containing a curfew condition. This is known as release on home detention curfew (“HDC”). Those prisoners who are eligible for HDC, taking account of a robust risk assessment may be released up to 6 months early, subject to certain conditions. These include a curfew condition, which requires the prisoner to remain in his or her home for up to 12 hours a day. Compliance with this condition is monitored by the use of remote monitoring equipment.

Cross-border Provision for HDC

3. Currently, prisoners eligible for HDC who are in custody in a Scottish prison and whose home address is in England or Wales cannot be released on HDC to their home address, due to the absence of arrangements for remote monitoring on behalf of the Scottish Ministers. The same applies in reverse in relation to prisoners in custody in England and Wales whose home address is in Scotland. This means that those prisoners who would otherwise be released on HDC (e.g. if they had a residential address in Scotland) are treated differently from prisoners in custody in their home country.

4. Provision has been put in place via an Order under the Scotland Act 1998 (The Management of Offenders etc. (Scotland) Act 2005 (Consequential Modifications) Order 2006 (S.I. 2006/1055)) to allow for the release on HDC in the receiving jurisdiction of prisoners who are transferred to or from England and Wales to or from Scotland on a restricted basis, subject to the rules governing the HDC scheme in the sending jurisdiction. (Transfer on a restricted basis means that prisoners remain subject to the law of the sending jurisdiction in relation to release on licence, and possible recall to custody). A further Order under the Scotland Act 1998, (The Scotland Act 1998 (Agency Arrangements) (Specification) (No. 2) Order 2008 (S.I. 2008/1788)) was considered and made at the Privy Council on 9 July 2008 and laid before the Scottish and Westminster Parliaments on 16 July. This Order provides for the Secretary of State and the Scottish Ministers to exercise certain functions on each others’ behalf in connection with the management of offenders who are transferred from Scotland to England and Wales or vice versa on a restricted basis. In essence the Order enables contractual arrangements to be put in place for the remote monitoring of compliance with a curfew condition in an HDC licence. This Order will come into force on 3 October 2008.

5. Scottish Government and Ministry of Justice officials are working on the detailed procedural guidance, which will be agreed with stakeholders involved in the HDC process in Scotland, England and Wales.

Legislation

6. Section 245C(3) of the 1995 Act requires the Scottish Ministers to make regulations to specify the devices which may be used for the purposes of remotely monitoring the compliance by an offender with the requirements of a restriction of liberty order. Section 12AB(3) of the 1993 Act provides for the application of section 245C of the 1995 Act in respect of the imposition of, and compliance with, a curfew condition in an HDC licence. This means that the devices which may be used for remotely monitoring offenders subject to Restriction of Liberty Orders may also be used for monitoring compliance with the curfew requirement of HDC.

Current Regulations and purpose of amendment

7. The 2006 Regulations specify the devices used by the company currently contracted to provide electronic monitoring services on behalf of the Scottish Ministers. The devices used by the companies contracted by the Secretary of State to provide similar services in England and Wales, while working in the same way as those used in Scotland, differ from those currently specified in the 2006 Regulations.

8. The purpose of these Regulations is to amend the 2006 Regulations to specify the devices used by the electronic monitoring contractors in England and Wales, to enable those devices to be used for prisoners released from a Scottish prison to an address in England or Wales.

9. There is no change to the courts or methods of compliance specified in the 2006 Regulations.

10. These Regulations will come into force on **20 October 2008**.

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.

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16 July 2008